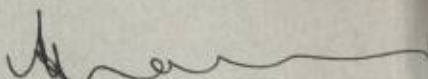


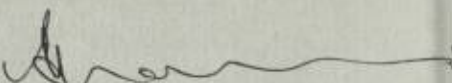
(d) by inserting after subsection (3) the following subsection—

“(3A) Subsections (1), (2) and (3) shall not apply in any case where the Commissioner has granted exemption to an executor under subsection (1) of section 14A.”

Passed by the Hong Kong Legislative Council this 26th day of April, 1972.

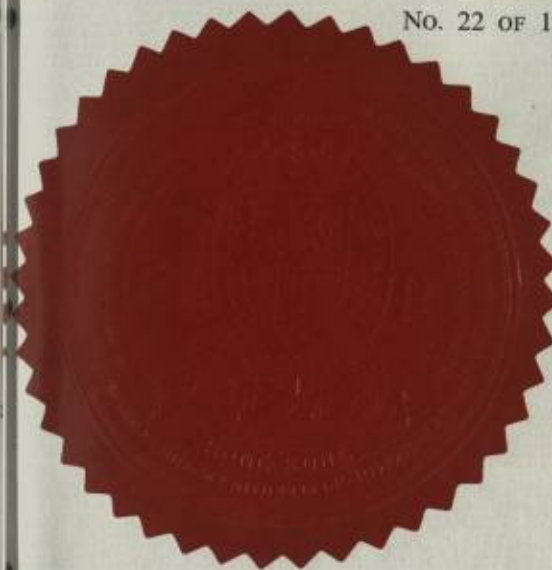

Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

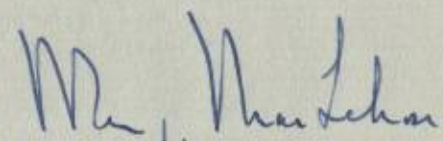

Clerk to the Legislative Council.

HONG KONG

No. 22 OF 1972



I assent.


Governor.

27th April, 1972.

An Ordinance to amend the Hong Kong Tourist Association Ordinance.

[28th April, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Hong Kong Tourist Association (Amendment) Ordinance 1972.

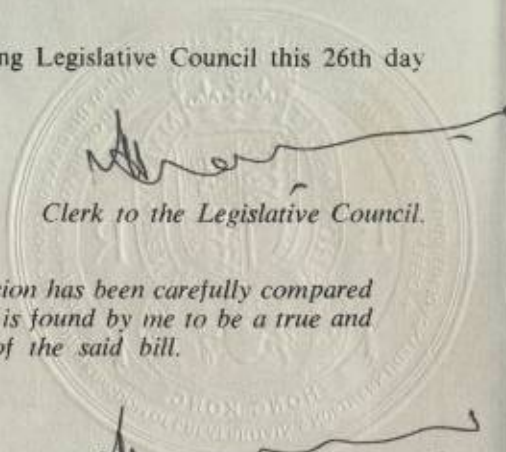
Short title.

2. The Schedule to the principal Ordinance is amended by inserting at the end thereof the following new badge—

Amendment of Schedule.
(Cap. 302.)



Passed by the Hong Kong Legislative Council this 26th day
of April, 1972.



Clerk to the Legislative Council.

*This printed impression has been carefully compared
by me with the bill, and is found by me to be a true and
correctly printed copy of the said bill.*

A handwritten signature in black ink, written over the faint seal.

Clerk to the Legislative Council.



I assent.

Mr. Peter Leung

Clerk to the Legislative Council.

*This printed impression has been carefully compared
by me with the bill, and is found by me to be a true and
correctly printed copy of the said bill.*

Clerk to the Legislative Council.

HONG KONG

NO. 23 OF 1972



I assent.

Mr. John Lubbock

Governor.

27th April, 1972.

An Ordinance to amend the Police Force Ordinance.

[28th April, 1972.]

Enacted by the Governor of Hong Kong, with the advice and
consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Police Force (Amendment) Ordinance 1972. Short title.

2. Section 8 of the principal Ordinance is amended by adding the following new subsections— Amendment of
section 8.
(Cap. 232.)

“(3) The Commissioner may—

- (a) establish such associations as he may think fit, composed only of police officers;
- (b) recognize any association composed only of police officers of the rank of inspector and above.

(4) The Commissioner may seek the advice of any such association on any matter relating to the welfare and conditions of service of all or any police officers.

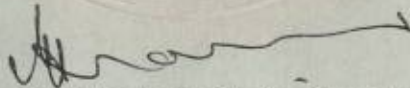
(5) An association established or recognized under subsection (3) shall not be a trade union for the purposes of this section or of any other law."

Passed by the Hong Kong Legislative Council this 26th day of April, 1972.



Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.



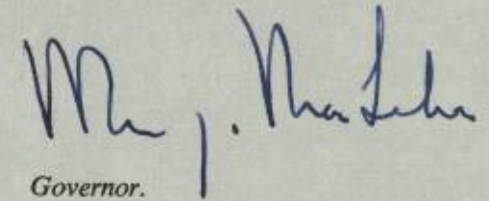
Clerk to the Legislative Council.

HONG KONG

No. 24 OF 1972



I assent.



Governor.

27th April, 1972.

An Ordinance to amend the Public Order Ordinance.

[28th April, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. This Ordinance may be cited as the Public Order (Amendment) Ordinance 1972.</p> | <p>Short title.</p> |
| <p>2. The principal Ordinance is amended in the heading to Part V by adding after "INTIMIDATION" the following—
"AND PUBLIC MISCHIEF".</p> | <p>Amendment of heading to Part V.
(Cap. 245.)</p> |
| <p>3. The principal Ordinance is amended by inserting the following new section 30—</p> | <p>Addition of new section 30.</p> |
| <p>"Public mischief.</p> | <p>30. (1) Any person who, whether orally or in writing or by any other means, publishes, or gives to any person, any information which he knows to be</p> |

false and which tends to give rise to apprehension for the safety of any person or property shall be guilty of the offence of public mischief and shall be liable—

- (a) on conviction on indictment, to a fine of fifty thousand dollars and to imprisonment for five years; and
- (b) on summary conviction, to a fine of twenty thousand dollars and to imprisonment for two years.

(2) Where it is proved that the person charged with an offence under this section published or gave false information, it shall, until the contrary is proved, be presumed that he knew such information to be false.”.

Amendment of section 31.

4. Section 31 of the principal Ordinance is amended in subsection (6)—

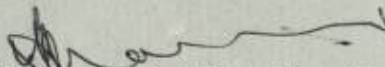
- (a) in paragraph (i) by deleting “, whether or not he is a member of the Essential Services Corps.”;
- (b) in paragraph (i) by deleting, after the semicolon, “and”;
- (c) in paragraph (j) by deleting the full stop and substituting a semicolon;
- (d) by inserting, after paragraph (j), the following—

“(k) a member of the Essential Services Corps in possession of an identity card issued under the Essential Services Corps (Identity Cards) Regulations;

(Cap. 197, sub. leg.)

- (l) a member of the Immigration Service; and
- (m) an employee of the Ministry of Defence in possession of a valid Army Department Pass.”.

Passed by the Hong Kong Legislative Council this 26th day of April, 1972.


Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

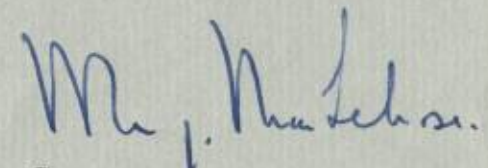

Clerk to the Legislative Council.

HONG KONG

No. 25 OF 1972



I assent.


Governor.

27th April, 1972.

An Ordinance to amend the District Court Ordinance and to make other consequential amendments.

[]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the District Court (Amendment) Ordinance 1972, and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*.

Short title and commencement.

2. Section 17 of the principal Ordinance is amended in paragraph (i) by deleting “fourteen days” and substituting the following—

Amendment of section 17. (Cap. 5.)

“three months”.

3. Section 30 of the principal Ordinance is amended, in subsection (2), by inserting after “only” the following—

Amendment of section 30.

“, whether or not the offence was included in the order transferring the charge or complaint to the Court”.

Addition of
new section
35A.

4. The principal Ordinance is amended by adding, after section 35, the following new section—

"Court may take into consideration outstanding offences on application of accused and consent of prosecution.

35A. (1) Where an accused person is convicted of an offence, the Court may, on the application of the person convicted and with the consent of the prosecution, in passing sentence on such person take into consideration any other offence of a similar nature which the convicted person admits having committed and which he desires the Court to deal with.

(Cap. 227.)

(2) Under subsection (1) the Court may take into consideration any indictable offence not included in any of the categories specified in Part III of the Second Schedule to the Magistrates Ordinance and, notwithstanding the provisions of this or any other Ordinance, any offence triable summarily only."

Amendment of
section 36.

5. Section 36 of the principal Ordinance is amended—

(a) in subsection (2), by deleting in proviso (b) "shall be without hard labour and";

(b) in subsection (3)—

(i) by deleting proviso (a); and

(ii) by deleting in proviso (b) "no such term of imprisonment" and substituting the following—

"no term of imprisonment imposed in default of payment of a fine"; and

(c) by inserting, after subsection (3), the following new subsection—

"(3A) The Court may, where it imposes a term of imprisonment on a person in default of payment of a fine, order that it shall not begin to run until the expiration of any other term of imprisonment to which that person has been sentenced, and for this purpose the Court may make a direction under subsection (1) notwithstanding that the aggregate of the terms of imprisonment exceeds the maximum period of five years which the Court has power to impose under proviso (a) to subsection (2)."

Repeal of
section 41.

6. Section 41 of the principal Ordinance is repealed.

Amendment of
Second
Schedule.

7. The Second Schedule to the principal Ordinance is amended, in Part I, by deleting "16."


8. The Indictment Rules are amended by inserting, after rule 1, the following—

"Charges for offences may be joined in same indictment.

1A. Charges for any offences, whether felonies or misdemeanours, may be joined in the same indictment if those charges are founded on the same facts, or form or are a part of a series of offences of the same or a similar character."

Amendment of
Indictment
Rules.
(Cap. 221, sub. leg.)

Passed by the Hong Kong Legislative Council this 26th day of April, 1972.

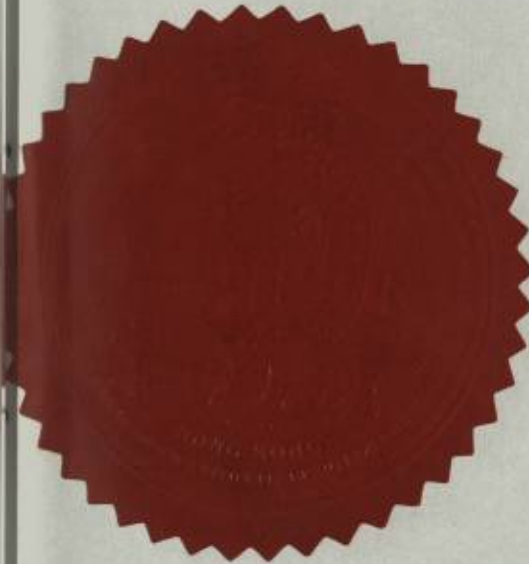

Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Clerk to the Legislative Council.

HONG KONG

No. 26 OF 1972



I assent.

Governor.

27th April, 1972.

An Ordinance to amend the Inland Revenue Ordinance.

[1st April, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. (1) This Ordinance may be cited as the Inland Revenue (Amendment) Ordinance 1972 and shall be deemed to have come into operation on 1st April 1972.

Short title and commencement.

(2) The amendment to the principal Ordinance made by section 2 shall apply in relation to all assessments made in respect of the year of assessment commencing on 1st April 1972 and subsequent years of assessment.

2. The Second Schedule to the principal Ordinance is amended—

Amendment of Second Schedule. (Cap. 112.)

(a) by deleting "For the year of assessment 1966/1967 and each year thereafter until superseded." and substituting therefor the following—


"For the years of assessment 1966/67 to 1971/72 inclusive."; and

(b) by inserting at the end thereof the following—

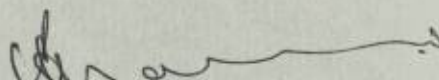
"For the year of assessment 1972/73 and each year thereafter.

	SECOND COLUMN.	THIRD COLUMN.
(a)	Upon the first five thousand dollars	2½ per cent.
(b)	Upon the next five thousand dollars	5 per cent.
(c)	— do —	7½ per cent.
(d)	— do —	10 per cent.
(e)	— do —	12½ per cent.
(f)	— do —	15 per cent.
(g)	— do —	17½ per cent.
(h)	— do —	20 per cent.
(i)	— do —	22½ per cent.
(j)	— do —	25 per cent.
(k)	— do —	27½ per cent.
(l)	Upon the remainder	30 per cent.

Passed by the Hong Kong Legislative Council this 26th day of April, 1972.


Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

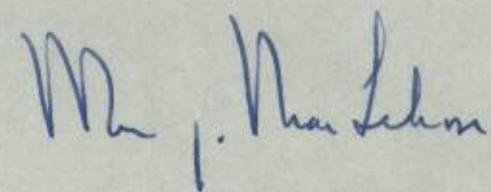

Clerk to the Legislative Council.

HONG KONG

NO. 27 OF 1972



I assent.



Governor.

27th April, 1972.

An Ordinance to amend the Estate Duty Ordinance.

[1st April, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Estate Duty (Amendment) (No. 2) Ordinance 1972 and shall be deemed to have come into operation on 1st April 1972.

Short title and commencement.

2. Section 3 of the principal Ordinance is amended in subsection (1) by deleting "means the Ninth Schedule" in the definition "applicable Schedule" and substituting the following—

Amendment of section 3. (Cap. 111.)

"but before the 1st day of April 1972 means the Ninth Schedule, and in the case of persons dying on or after the 1st day of April 1972 means the Tenth Schedule".

Amendment of section 13.

3. Section 13 of the principal Ordinance is amended in subsection (1) by inserting after "on or after the 1st day of January 1963," the following—

"and before the 1st day of April 1972, or five thousand dollars in the case of persons dying on or after the 1st day of April 1972."

Amendment of section 35.

4. Section 35 of the principal Ordinance is amended in subsection (4) by deleting "Tenth" and substituting the following—
"Eleventh".

Amendment of Ninth Schedule.

5. The Ninth Schedule to the principal Ordinance is amended by deleting "until this Schedule is superseded" and substituting therefor the following—

"before the 1st April 1972".

Renumbering of Tenth Schedule and insertion of new Tenth Schedule.

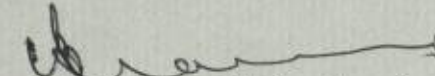
6. The principal Ordinance is amended—
- (a) by renumbering the Tenth Schedule as the Eleventh Schedule; and
 - (b) by inserting before the Eleventh Schedule (as so renumbered) the following new Schedule—

"TENTH SCHEDULE [ss. 3, 5, 14, 16, 17, 23, 24 & 27.]

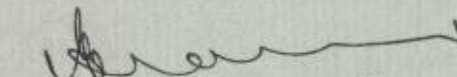
(Persons dying on or after the 1st day of April 1972 and until this Schedule is superseded)

Where the principal value of the estate		Estate duty shall be payable at the rate per cent of
\$	\$	
Exceeds 200,000 and does not exceed 300,000	300,000	5
" 300,000 " " " " 400,000	400,000	6
" 400,000 " " " " 500,000	500,000	7
" 500,000 " " " " 550,000	550,000	8
" 550,000 " " " " 600,000	600,000	9
" 600,000 " " " " 650,000	650,000	10
" 650,000 " " " " 700,000	700,000	11
" 700,000 " " " " 800,000	800,000	12
" 800,000 " " " " 900,000	900,000	13
" 900,000 " " " " 1,000,000	1,000,000	14
" 1,000,000		15

Passed by the Hong Kong Legislative Council this 26th day of April, 1972.


Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Clerk to the Legislative Council.

HONG KONG

No. 28 OF 1972



I assent.

W. M. P. Leung
Governor.

11th May, 1972.

An Ordinance to amend the Adoption Ordinance.

[12th May, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Adoption (Amendment) Ordinance 1972.

Short title.

2. Section 25 of the principal Ordinance is repealed and replaced by the following—

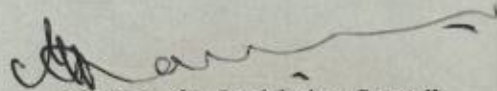
Repeal and replacement of section 25. (Cap. 290.)

"Adoption to be effected under the Ordinance.


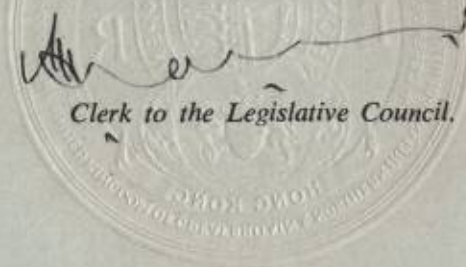
25. (1) After the 31st December 1972, an adoption in Hong Kong may be effected only in accordance with this Ordinance.

(2) Subsection (1) shall not affect in any way the status or rights of a person adopted in Hong Kong under Chinese law and custom before the 31st December 1972."

Passed by the Hong Kong Legislative Council this 10th day of May, 1972.

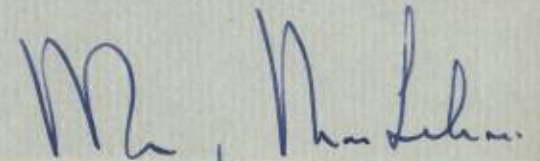

Clerk to the Legislative Council.

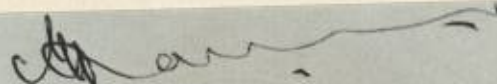
This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Clerk to the Legislative Council.


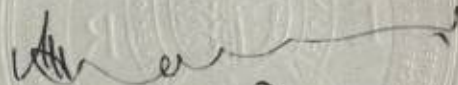


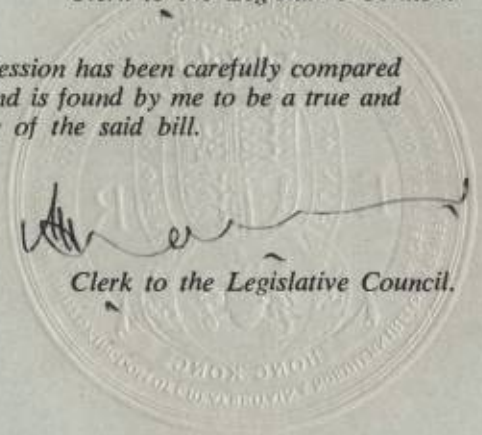
I assent.




Clerk to the Legislative Council.

*This printed impression has been carefully compared
by me with the bill, and is found by me to be a true and
correctly printed copy of the said bill.*


Clerk to the Legislative Council.

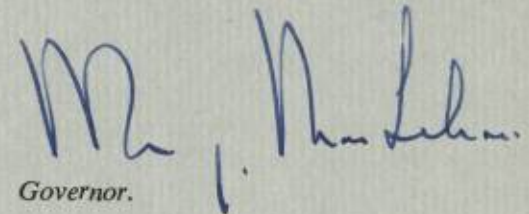


HONG KONG

No. 29 OF 1972



I assent.


Governor.

11th May, 1972.

An Ordinance to prohibit chit-fund businesses and to make provision for other connected purposes.

[12th May, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Chit-Fund Businesses (Prohibition) Ordinance 1972. Short title.

2. In this Ordinance, unless the context otherwise requires— Interpretation.

“chit-fund” means a scheme or arrangement, whether known as chit-fund or “hwei” or by any other name, whereby or as part of which the participants subscribe periodically or otherwise to a common fund and that common fund is put up for sale or payment to the participants by auction, tender, bid, ballot or otherwise;

"operate" includes manage, form, conduct, organize, advertise and aid, assist or take part in operating;

"Registrar" means the Registrar of Companies.

3. (1) Subject to section 5 and to subsection (2), any person who operates a chit-fund shall be guilty of an offence and shall be liable on conviction to a fine of 10,000 dollars and to imprisonment for 3 years.

(2) Notwithstanding subsection (1), if an offence is committed under this section by reason only of the breach of one or both of paragraphs (a) and (c) of section 5(2), the offender shall be liable to a fine of 1,000 dollars and to imprisonment for one year.

4. (1) Subject to subsection (2) a person who was operating a chit-fund on the 1st December 1971, other than a chit-fund operated in accordance with section 5(2), may continue its operation until completion of the chit-fund or until the 31st December 1973, whichever is the earlier, if, within 30 days after the commencement of this Ordinance and upon payment of a fee of 5 dollars, he files with the Registrar in the form set out in the Schedule the particulars required thereby.

(2) Subsection (1) shall not apply in a case where the particulars filed—

- (a) are in any respect incomplete;
- (b) are false or misleading;
- (c) do not adequately identify the chit-fund to which they refer.

(3) Any person who files false or misleading particulars under this section shall be guilty of an offence and shall be liable on conviction to a fine of 10,000 dollars and to imprisonment for 3 years.

(4) A form filed under this section shall be available for inspection by any member of the public upon payment of a fee of 1 dollar.

5. (1) Section 3 shall not have effect—

- (a) in respect of a chit-fund in operation on the 1st December 1971 until 30 days after the commencement of this Ordinance;
- (b) in respect of a chit-fund continuing to operate by virtue of section 4(1);
- (c) in respect of a chit-fund operated in accordance with subsection (2).

Chit-fund
business an
offence.

Continuation
of chit-funds
upon filing of
particulars.

Schedule.

Application of
section 3.

(2) A chit-fund may be operated if—

- (a) there are not more than 30 participants;
- (b) the operator is not at the same time operating another chit-fund;
- (c) the common fund put up for sale or payment to the participants does not exceed 10,000 dollars; and
- (d) no benefit accrues to the operator other than a right to receive the first subscription free of interest.

(3) Notwithstanding anything contained in this section any person who advertises a chit-fund, whether in a newspaper or by any other means, shall be guilty of an offence and shall be liable to a fine of 10,000 dollars and to imprisonment for 3 years.

6. A company which has as its object or as one of its objects the operation of chit-funds shall not be registered under the Companies Ordinance after the commencement of this Ordinance.

Prohibition on
registration of
chit-fund
companies.
(Cap. 32.)

7. (1) Subject to subsection (2), a registered company which has as its object or one of its objects the operation of chit-funds shall within 90 days after the commencement of this Ordinance—

Alternatives
open to
registered
chit-fund
companies.

- (a) amend its memorandum and articles of association in accordance with sections 8(1) and 13(1) of the Companies Ordinance so as to delete all references to the operation of chit-funds, and, if necessary, change its name in accordance with section 22(1) of the Companies Ordinance so as to delete any reference therein to chit-funds; or
- (b) pass a resolution that it be wound up voluntarily in accordance with section 228(1)(b) of the Companies Ordinance; or
- (c) pass a resolution that it be wound up by the court in accordance with section 177(a) of the Companies Ordinance and present a petition to that effect under section 179(1) of that Ordinance.

(Cap. 32.)

(2) In the case of a registered company continuing to operate a chit-fund by virtue of section 4(1), the period of 90 days specified in subsection (1) of this section shall run from the last day of operation of the fund.

Striking off of companies failing to comply with section 7.

- 8. (1) If a registered company—
 - (a) fails to comply with section 7; or
 - (b) having taken action under paragraph (b) or (c) of section 7(1), fails to proceed expeditiously in the opinion of the Registrar to complete its winding-up,

the company shall be deemed, for the purposes of section 291 of the Companies Ordinance, to have ceased to carry on business.

(Cap. 32.)

(2) Where a company is deemed under subsection (1) to have ceased to carry on business, the Registrar may, without complying with section 291(1) and (2) of the Companies Ordinance but after complying with section 291(3) of that Ordinance, strike the name of the company off the register under section 291(6) of that Ordinance.

(3) Save as provided in subsections (1) and (2), nothing in this section shall affect the application of the Companies Ordinance or the procedure prescribed thereby.

Liability of directors, managers, etc., under sections 3 and 4.

9. (1) If an offence under this Ordinance has been committed by a body of persons, whether corporate or unincorporate, any person who was, at the time of the offence, a director, partner, member, manager, secretary or principal officer of or employed by such body, or who was purporting to act in any such capacity, shall be guilty of a like offence.

(2) Where any person referred to in subsection (1) is charged with an offence under this Ordinance, it shall be a defence for him to prove that the offence was committed without his consent or connivance, and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and to all other circumstances.

(3) Where the agent or servant of a person (hereinafter referred to in this section as "the principal") does or omits to do anything which, if done or omitted to be done by the principal, would constitute an offence under this Ordinance, then the agent or servant and the principal shall be deemed to have committed an offence and shall be liable to be proceeded against and punished accordingly.

(4) Where the principal is charged with an offence under this Ordinance, it shall be a defence for him to prove—

- (a) that he did not ratify the act or omission complained of; and

- (b) that the act or omission was not within the ordinary scope of the employment of the agent or servant,

but it shall be no defence that he had no knowledge of the act or omission.

10. Nothing in this Ordinance shall prejudice the enforcement by any person of any right or claim against any person ceasing to carry on business or to operate chit-funds, by virtue of this Ordinance.

Saving of rights and claims.

SCHEDULE [s. 4(1).]

FORM

CHIT-FUND BUSINESSES (PROHIBITION) ORDINANCE 1972

(Particulars of chit-fund in operation at 1st December 1971)

Name and address of operator

Name or number or other means of identifying the chit-fund

Names and addresses of participants

- 1.
- 2.
- 3.
- etc.

Amount of monthly or other periodical subscriptions

Date of first subscription

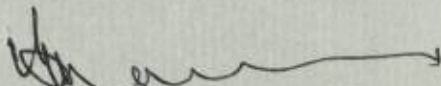
Duration of chit-fund and date of final subscription (not later than 31st December 1973)

Number of other chit-funds operated by operator on 1st December 1971

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Signature.

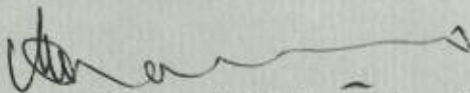
(To be signed by the sole proprietor or a partner of a business, or by a director or the secretary of a company).

Passed by the Hong Kong Legislative Council this 10th day
of May, 1972.



Clerk to the Legislative Council.

*This printed impression has been carefully compared
by me with the bill, and is found by me to be a true and
correctly printed copy of the said bill.*



Clerk to the Legislative Council.

HONG KONG

No. 30 of 1972



I assent.

Governor.

25th May, 1972.

An Ordinance to amend the University of Hong Kong Ordinance.

[26th May, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the University of Hong Kong (Amendment) Ordinance 1972. Short title.

2. Section 5 of the principal Ordinance is amended in subsection (4) by inserting after "Registrar" the following— Amendment of section 5.
(Cap. 1053.)
"or the Secretary to the Council".

Passed by the Hong Kong Legislative Council this 24th day of May, 1972.

Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.



Clerk to the Legislative Council.

HONG KONG

No. 31 of 1972



I assent.

M. J. M. Lehn
Governor.

25th May, 1972.

An Ordinance to amend the Pharmacy and Poisons Ordinance.

[26th May, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Pharmacy and Poisons (Amendment) Ordinance 1972. Short title.
2. Section 3 of the principal Ordinance is amended by inserting after subsection (3), the following new subsection— Amendment of section 3. (Cap. 138.)

“(4) There shall be a Secretary to the Board who shall be appointed by the Governor.”.
3. Section 9 of the principal Ordinance is amended in subsection (1) by inserting after “pharmacist” in the second place where it occurs the following— Amendment of section 9.

“in the prescribed form”.

Amendment of section 16.

4. Section 16 of the principal Ordinance is amended by inserting after subsection (1), the following new subsection—

“(1A) A Disciplinary Committee shall conduct an inquiry in accordance with the prescribed procedure.”.

Addition of new section 16A.

5. The principal Ordinance is amended by adding after section 16 the following new section—

“Powers of Disciplinary Committee at inquiries.

16A. (1) For the purposes of an inquiry under section 16 the Disciplinary Committee may, subject to subsection (4)—

- (a) hear and examine witnesses on oath;
- (b) summon any person to attend the inquiry to give evidence or produce any document or other thing in his possession and examine him as a witness or require him to produce any document or other thing in his possession.

(2) A summons under subsection (1) shall be in the prescribed form and shall be signed by the chairman.

(3) Subject to subsection (4), any person who—

- (a) being summoned under subsection (1) to attend any inquiry to give evidence or to produce any document or other thing in his possession, refuses or neglects to do so; or
- (b) being examined under subsection (1) as a witness by or before the Disciplinary Committee, refuses or neglects to answer any question put to him by or with the concurrence of the Disciplinary Committee, or to produce any document or other thing in his possession when required to do so,

shall be guilty of an offence and shall be liable on conviction to a fine of five hundred dollars and to imprisonment for three months.

(4) Any person who appears as a witness before the Disciplinary Committee shall be entitled to the same privileges in respect of the giving of evidence and the production of any document and other thing as he would be entitled to if appearing as a witness in civil proceedings before the Supreme Court.

(5) Any person who—

- (a) behaves in an insulting manner or uses any threatening or insulting expression to or in the presence of the Disciplinary Committee; or
- (b) wilfully disrupts the proceedings of the Disciplinary Committee,

shall be guilty of an offence and shall be liable on conviction to a fine of five hundred dollars and to imprisonment for three months.”.

6. Section 29 of the principal Ordinance is amended—

Amendment of section 29.

(a) by inserting after paragraph (b) the following new paragraph—

“(ba) prescribing the procedure to be followed in inquiries held by the Disciplinary Committee under the provisions of section 16;” and

(b) in paragraph (c) by inserting after “selling,” the following—

“purchasing.”.

7. Section 34 of the principal Ordinance is amended—

Amendment of section 34.

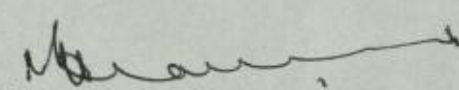
(a) by deleting “one thousand dollars” and substituting the following—

“ten thousand dollars and to imprisonment for twelve months”;

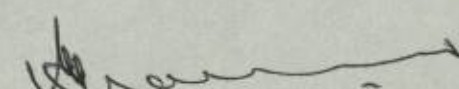
(b) by deleting “one hundred” and substituting the following—

“one thousand”.

Passed by the Hong Kong Legislative Council this 24th day of May, 1972.


Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

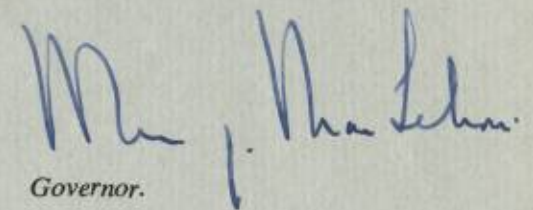

Clerk to the Legislative Council.

HONG KONG

No. 32 of 1972



I assent.


Governor.

25th May, 1972.

An Ordinance to amend the Legal Practitioners Ordinance.

[26th May, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Legal Practitioners (Amendment) Ordinance 1972. Short title.

2. Section 27 of the principal Ordinance is amended in subsection (1) by deleting paragraph (a) and substituting the following— Amendment of section 27. (Cap. 159.)

- “(a) (i) he has been called to the Bar in England or Northern Ireland; or
(ii) he has been admitted as an advocate in Scotland; or
(iii) he has qualified as a barrister in Hong Kong in accordance with such requirements as may be

prescribed by the Chief Justice by rules under section 72A with respect to pupillage and to passing of examinations;”.

Addition of
new section
72A.

3. The principal Ordinance is amended by adding after section 72 the following new section—

“Rules for
barristers
in Hong
Kong.

72A. The Chief Justice may make rules in relation to the admission of persons who seek to qualify or have qualified as barristers in Hong Kong—

- (a) regulating the enrolment of students seeking to become barristers in Hong Kong;
- (b) regulating the period of pupillage to be served and the examinations to be passed by such students;
- (c) generally for the better control of such students.”.

Amendment of
section 73.

4. The principal Ordinance is amended in section 73(1)(d) by deleting the word “overseas”.

Addition of
new section
74A.

5. The principal Ordinance is amended by adding, after the heading to Part VIII, the following new section—

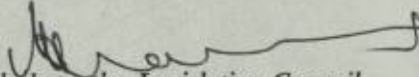
“Advisory
Committee
on Legal
Education.

74A. (1) There is hereby established an Advisory Committee on Legal Education which may advise the Chief Justice and the Vice-Chancellor of the University of Hong Kong on the education, professional training and qualifications for admission of barristers and solicitors.

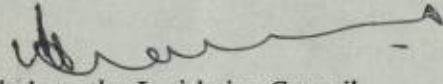
(2) The Advisory Committee on Legal Education shall consist of—

- (a) a judge, nominated by the Chief Justice, who shall be the Chairman;
- (b) the President of the Society, or his representative;
- (c) the Chairman of the Bar Committee, or his representative; and
- (d) a person nominated by the Vice-Chancellor of the University of Hong Kong.”.

Passed by the Hong Kong Legislative Council this 24th day of May, 1972.


Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Clerk to the Legislative Council.

HONG KONG

No. 33 of 1972



I assent.

M. J. MacLehose
Governor.

25th May, 1972.

An Ordinance to amend the Matrimonial Causes Ordinance.

[1st July, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Matrimonial Causes (Amendment) (No. 2) Ordinance 1972 and shall come into operation on the 1st July 1972.

Short title and commencement.

2. Section 10C of the principal Ordinance is amended—

Amendment of section 10C. (Cap. 179.)

(a) by deleting “subsection (2) of section 15” and substituting the following—

“section 18A(c)”; and

(b) by deleting “before” and substituting the following—
“either before or after”.

3. Section 11 of the principal Ordinance is repealed and replaced by the following new sections—

Repeal and replacement of section 11.

“Ground for petition.
1969 c. 55,
s. 1.

11. The sole ground on which a petition for divorce may be presented to the court by either party to a marriage shall be that the marriage has broken down irretrievably.

Proof of ground for petition. *cf.* 1969 c. 55, s. 2(1).

11A. (1) The court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts—

- (a) that the respondent has committed adulterly and the petitioner finds it intolerable to live with the respondent;
- (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
- (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
- (d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to a decree being granted;
- (e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.

1969 c. 55, s. 2(4).

(2) For the purposes of subsection (1)(c), the court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention if the evidence before the court is such that, had that party not been so incapable, the court would have inferred that his desertion continued at that time.

1969 c. 55, s. 2(5).

(3) For the purposes of this Part, a husband and wife shall be treated as living apart unless they are living with each other in the same household.”

Amendment of section 13.

4. Section 13 of the principal Ordinance is amended—

- (a) in subsection (1) by inserting after “petitioner” the following—
“or respondent”; and
- (b) in subsection (2) by deleting “adultery, desertion or other”.

5. Section 14 of the principal Ordinance is amended—

- (a) in subsection (1), by deleting “on the ground of adultery, or in the answer of a husband praying for divorce on that ground” and substituting the following—
“in which adultery is alleged, or in the answer of the husband praying for divorce and alleging adultery”;
- (b) in subsection (2), by deleting “on the ground of adultery” and substituting the following—
“in which adultery is alleged”.

Amendment of section 14.

6. Section 15 of the principal Ordinance is repealed and replaced by the following new section—

Repeal and replacement of section 15.

“Hearing of petition. 1969 c. 55, s. 2(2).

15. (1) On a petition for divorce, it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent.

1969 c. 55, s. 2(3).

(2) If the court is satisfied on the evidence of any such fact as is mentioned in section 11A(1), then unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to subsection (3) of this section, grant a decree *nisi* of divorce.

1965 c. 72, s. 5(5).

(3) If it appears to the court, at the hearing of a petition for divorce presented in pursuance of leave granted under section 12(2), that the leave was obtained by the petitioner by any misrepresentation or concealment of the nature of the case, the court may—

- (a) dismiss the petition, without prejudice to any petition which may be brought after the expiration of the period of three years from the date of the marriage upon the same facts, or substantially the same facts, as those proved in support of the dismissed petition; or
- (b) if it grants a decree, direct that no application to make the decree absolute shall be made during that period.

1965, c. 72, s. 5(6).

(4) If in any proceedings for divorce the respondent alleges against the petitioner and proves any such fact as is mentioned in section 11A(1), the court may give to the respondent the relief to which the respondent would have been entitled if the respondent had presented a petition seeking that relief.

1965, c. 72,
s. 5(7).

(5) Every decree of divorce shall in the first instance be a decree *nisi* and shall not be made absolute before the expiration of three months from its grant, unless the Chief Justice by general order, or the court in any particular case, fixes a shorter period."

7. The principal Ordinance is amended by adding after section 15 the following new sections—

"Provisions
to encourage
reconcilia-
tion.
(cf. 1969 c. 55,
s. 3(2)-(6).)

15A. (1) If at any stage of proceedings for divorce it appears to the court that there is a reasonable possibility of a reconciliation between the parties to the marriage, the court may adjourn the proceedings for such period, as it thinks fit to enable attempts to be made to effect such a reconciliation.

(2) The power of the court to adjourn under subsection (1) shall be additional to any other power of the court to adjourn proceedings.

(3) Where the parties to the marriage have lived with each other for any period or periods after it has become known to the petitioner that the respondent has, since the celebration of the marriage, committed adultery—

- (a) if the length of that period or of those periods together is six months or less, their living with each other during that period or those periods shall be disregarded in determining for the purposes of section 11A(1)(a) whether the petitioner finds it intolerable to live with the respondent; but
- (b) if the length of that period or of those periods together exceeds six months, the petitioner shall not be entitled to rely on that adultery for the purpose of section 11A(1)(a).

(4) Where the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him, but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the petitioner and held by the court to support his allegation, that fact shall be disregarded in determining, for the purposes of section 11A(1)(b), whether the petitioner cannot reasonably be expected to live with the respondent if the length of that period or of those periods together is six months or less.

Addition of
new sections
15A, 15B and
15C.

(5) In considering for the purposes of section 11A(1)(c), (d) or (e) whether the period for which the respondent has deserted the petitioner or the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any period or periods together not exceeding six months during which the parties have resumed living with each other, but no period during which the parties lived with each other shall count as part of the period of desertion or of the period for which the parties to the marriage have lived apart, as the case may be.

(6) References in this section to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household.

Decree to
be refused
in certain
circum-
stances.
1969 c. 55,
s. 4.

15B. (1) The respondent to a petition for divorce in which the petitioner alleges any such fact as is mentioned in section 11A(1)(e) may oppose the grant of decree *nisi* on the ground that the dissolution of the marriage will result in grave financial or other hardship to him and that it would in all the circumstances be wrong to dissolve the marriage.

(2) Where the grant of a decree *nisi* is opposed by virtue of this section, then—

- (a) if the court is satisfied that the only fact on which the petitioner is entitled to rely in support of his petition is that mentioned in section 11A(1)(e); and
- (b) if apart from this section it would grant a decree *nisi*,

the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interest of those parties and of any children or other persons concerned, and if the court is of opinion that the dissolution of the marriage will result in grave financial or other hardship to the respondent and that it would in all circumstances be wrong to dissolve the marriage it shall dismiss the petition.

(3) For the purposes of this section hardship shall include the loss of the chance of acquiring any benefit which the respondent might acquire if the marriage were not dissolved.

Power to rescind decree nisi in certain cases. 1969 c. 55, s. 5.

15C. Where the court on granting a decree *nisi* of divorce holds that the only fact on which the petitioner is entitled to rely in support of his petition is that mentioned in section 11A(1)(d), it may, on application made by the respondent at any time before the decree is made absolute, rescind the decree if it is satisfied that the petitioner has misled the respondent, whether intentionally or unintentionally, about any matter which the respondent has taken into account in deciding to consent to the grant of a decree.”.

Amendment of section 16.

- 8.** Section 16(1) of the principal Ordinance is amended—
- (a) in paragraph (b), by deleting the semicolon at the end thereof and substituting a full stop; and
 - (b) by deleting paragraph (c).

Amendment of section 17.

- 9.** Section 17(1) of the principal Ordinance is amended—
- (a) by deleting “either by reason of its having been obtained by collusion or”; and
 - (b) in paragraph (a), by deleting “(7)” and substituting the following—

“(5)”.

Addition of new section 17A.

10. The principal Ordinance is amended by adding after section 17 the following new section—

“Financial protection for respondent in certain cases. 1969 c. 55, s. 6.

- 17A.** (1) This section shall apply where—
- (a) the respondent to a petition for divorce in which the petitioner alleges any such fact as is mentioned in section 11A(1)(d) or (e) has applied to the court under this section for it to consider the financial position of the respondent after the divorce; and
 - (b) a decree *nisi* of divorce has been granted on the petition and the court holds that the only fact on which the petitioner is entitled to rely in support of his petition is that mentioned in section 11A(1)(d) or (e).
- (2) The court hearing an application by the respondent under subsection (1) shall consider—
- (a) all the circumstances, including the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties; and
 - (b) the financial position of the respondent as, having regard to the divorce, it is likely to

be after the death of the petitioner should the petitioner die first.

(3) Notwithstanding anything in this Ordinance but subject to subsection (4), the court shall not make absolute the decree of divorce if an application has been made under subsection (1), unless it is satisfied that—

- (a) the petitioner should not be required to make any financial provision for the respondent; or
- (b) the financial provision made by the petitioner for the respondent is reasonable and fair or the best that can be made in the circumstances.

(4) The court may, if it thinks fit, proceed without observing the requirements of subsections (2) and (3) if—

- (a) it appears that there are circumstances making it desirable that the decree should be made absolute without delay; and
- (b) the court has obtained a satisfactory undertaking from the petitioner that he will make such financial provision for the respondent as the court may approve.”.

11. The principal Ordinance is amended by adding after section 18 the following new sections—

Addition of new sections 18A and 18B.

“Court not to dismiss petition or application to make absolute a decree nisi on ground of collusion or misconduct of petitioner. 1969 c. 55, s. 9(3).

18A. Without prejudice to any provision of this Ordinance which empowers or requires the court to dismiss a petition for divorce or judicial separation or to dismiss an application for a decree *nisi* to be made absolute, nothing in any rule of law shall be taken as empowering or requiring the court to dismiss such a petition or application on the ground of collusion between the parties in connexion with the presentation or prosecution of the petition or the obtaining of the decree *nisi* or on the ground of any conduct on the part of the petitioner.

Rules.

18B. The Chief Justice may make rules for the purposes of—

1969 c. 55, s. 2(6).

- (a) ensuring that, where on a petition for divorce the petitioner, in pursuance of section 11A(1)(d), alleges that the respondent con-

sents to a decree being granted, the respondent has been given such information as will enable him to understand the consequences to him of his consenting to a decree being granted and the steps which he must take to indicate that he consents to the grant of a decree; and

1969 c. 55,
s. 3(1).

(b) requiring the solicitor acting for a petitioner for divorce to certify whether he has discussed with the petitioner the possibility of a reconciliation and given him the names and address of persons qualified to help effect a reconciliation between the parties to a marriage who have become estranged; and

1969 c. 55,
s. 7(1).

(c) enabling the parties to a marriage, or either of them, on application made either before or after the presentation of a petition for divorce, to refer to the court any agreement or arrangement made or proposed to be made between them, being an agreement or arrangement which relates to, arises out of, or is connected with, the proceedings for divorce which are contemplated or, as the case may be, have begun, and for enabling the court to express an opinion, should it think it desirable to do so, as to the reasonableness of the agreement or arrangement and to give such directions, if any, in the matter as it thinks fit."

Repeal and
replacement of
section 20.

12. Section 20 of the principal Ordinance is repealed and replaced by the following new section—

"Grounds
for decree
of nullity.
[cf. 1971 c. 44,
s. 1.]

(Cap. 181.)

20. (1) A marriage which takes place after 30th June 1972 shall be void on any of the following grounds only—

- (a) that it is not a valid marriage under section 27 of the Marriage Ordinance, that is to say—
- (i) the parties to the marriage are within the prohibited degrees of kindred or affinity; or
 - (ii) either party is under the age of sixteen; or
 - (iii) the parties have intermarried in disregard of certain requirements as to the formation of marriage;

- (b) that the marriage is otherwise invalid by the law of Hong Kong;
- (c) that at the time of the marriage either party was already lawfully married;
- (d) that the parties are not respectively male and female.

1971 c. 44,
s. 2.

(2) A marriage which takes place after the 30th June 1972 shall, subject to subsection (3), be voidable on any of the following grounds only—

- (a) that the marriage has not been consummated owing to the incapacity of either party to consummate it;
- (b) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;
- (c) that either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise;
- (d) that at the time of the marriage either party to the marriage, though capable of giving a valid consent, was suffering, whether continuously or intermittently, from mental disorder within the meaning of the Mental Health Ordinance of such a kind or to such extent as to be unfitted for marriage;
- (e) that at the time of the marriage the respondent was suffering from venereal disease in a communicable form;
- (f) that at the time of the marriage the respondent was pregnant by some person other than the petitioner.

(Cap. 136.)

1971 c. 44,
s. 3(1).

(3) The court shall not, in proceedings instituted after the 30th June 1972, grant a decree of nullity on the ground that a marriage is voidable (whether the marriage took place before or after 1st July 1972) if the respondent satisfies the court—

- (a) that the petitioner, with knowledge that it was open to him to have the marriage avoided, so conducted himself in relation to the respondent as to lead the respondent reasonably to believe that he would not seek to do so; and

(b) that it would be unjust to the respondent to grant the decree.

1971 c. 44,
s. 3(2).

(4) Without prejudice to subsection (3), the court shall not grant a decree of nullity on the grounds mentioned in subsection (2)(c), (d), (e) or (f) unless the court is satisfied that the proceedings were instituted within three years from the date of the marriage.

1971 c. 44,
s. 3(3).

(5) Without prejudice to subsections (3) and (4), the court shall not grant a decree of nullity on the grounds mentioned in subsection (2)(e) or (f) unless the court is satisfied that the petitioner was at the time of the marriage ignorant of the facts alleged.

[*cf.* 1971, c. 44,
s. 3(4).]

(6) Subsection (3) replaces, in relation to any decree to which it applies, any rule of law whereby a decree may be refused by reason of approbation, ratification or lack of sincerity on the part of the petitioner or on similar grounds.”

Addition of
new sections
20A and 20B.

13. The principal Ordinance is amended by adding after section 20 the following new sections—

“Foreign
marriages.
1971 c. 44,
s. 4.

20A. (1) Where apart from this Ordinance, any matter affecting the validity of a marriage would fall to be determined (in accordance with the rules of private international law) by reference to the law of a country outside Hong Kong, nothing in section 20 shall—

- (a) preclude the determination of that matter as aforesaid; or
- (b) require the application to the marriage of the grounds or bars mentioned therein except so far as applicable in accordance with those rules.

1892 c. 23,
1947 c. 33.

(2) In the case of a marriage which purports to have been celebrated under the Foreign Marriages Acts 1892 to 1947 or has taken place outside Hong Kong and purports to be a marriage under common law, section 20(1) is without prejudice to any ground on which the marriages may be void under those Acts or as the case may be, by virtue of the rules governing the celebration of marriages outside Hong Kong under common law.

Decree of
nullity in
case of
voidable
marriage.
1971 c. 44,
s. 5.

20B. A decree of nullity granted after 30th June 1972 on the ground that a marriage is voidable shall operate to annul the marriage only as respects any time after the decree has been made absolute, and the marriage shall, notwithstanding the decree, be treated as if it had existed up to that time.”.

14. Section 22 of the principal Ordinance is amended by deleting “(7)” and substituting the following—

Amendment of
section 22.

“(5)”.

15. The principal Ordinance is amended by adding after section 22 the following new section—

Addition of
new section 23.

“Collusion
not to be
bar to
relief in
nullity pro-
ceedings.
1971 c. 44,
s. 6(1).

23. Collusion shall not be a bar to the granting of a decree of nullity, whether the marriage took place, or the proceedings were instituted, before or after the 1st July 1972.”.

16. Section 24 of the principal Ordinance is amended—

Amendment of
section 24.

(a) by deleting subsection (1) and substituting the following—

“1969 c. 55,
s. 8(2).

(1) A petition for judicial separation may be presented to the court by either party to a marriage on the ground that any such fact as is mentioned in section 11A(1) exists, and sections 11A(2), (3), 15A and 18A shall apply in relation to such a petition as if they apply in relation to a petition for divorce.”; and

(b) by inserting after subsection (1) the following new subsection—

“1969 c. 55,
s. 8(3).

(1A) The court hearing a petition for judicial separation shall not be concerned to consider whether the marriage has broken down irretrievably and if it is satisfied on the evidence of any such fact as is mentioned in section 11A(1), it shall, subject to section 45, grant a decree of judicial separation.”.

17. Section 26 of the principal Ordinance is amended—

Amendment of
section 26.

(a) in subsection (3) by deleting “(7)” and substituting the following—

“(5)”; and

(b) by inserting after subsection (3) the following new subsection—

"1971 c. 44,
s. 6(2).

(4) Neither collusion nor any other conduct on the part of the petitioner which has at any time been a bar to relief in matrimonial proceedings shall constitute a bar to the grant of a decree under this section."

Amendment of
section 27.

18. Section 27 of the principal Ordinance is amended by deleting paragraph (b) and substituting the following—

"(b) in the case of a petition for divorce or judicial separation presented by the wife alleging any such fact as is mentioned in section 11A(1)(e), where the court is satisfied on proof of such facts as may be prescribed by rules that her husband is insane, to the husband."

Amendment of
section 28.

19. Section 28 of the principal Ordinance is amended by deleting subsection (3) and substituting the following—

"(3) Where on a petition for divorce presented by the wife, the court grants her a decree of divorce and holds that the only fact on which she is entitled to rely is that mentioned in section 11A(1)(e), if the court is satisfied on proof of such facts as may be prescribed by rules that the husband is insane, subsection (1) shall have effect with the substitution of references to the wife for references to the husband and of references to the husband for references to the wife."

Amendment of
section 29.

20. Section 29 of the principal Ordinance is amended by deleting subsection (2) and substituting the following—

"(2) Where on a petition for divorce presented by the husband—

- (a) the husband satisfies the court of any such fact as is mentioned in section 11A(1)(a), (b) or (c);
- (b) the court grants him a decree of divorce; and
- (c) it appears to the court that the wife is entitled to any property either in possession or in reversion,

the court may, if it thinks fit, order such settlement as it thinks reasonable to be made of the property, or of any part of it, for the benefit of the husband and of the children of the marriage or either or any of them."

21. Section 32(1) of the principal Ordinance is amended by deleting paragraph (b) and substituting the following—

Amendment of
section 32.

"(b) in a case where the petition is presented by the wife and the court holds that the only fact on which she is entitled to rely is that mentioned in section 11A(1)(e), if the court is satisfied on proof of such facts as may be prescribed by rules that the husband is insane, to the husband."

22. Section 42 of the principal Ordinance is amended by deleting subsection (2) and substituting the following—

Amendment of
section 42.

"(2) Where—

- (a) a petition for divorce or judicial separation is presented by a wife and the court is satisfied on proof of such facts as may be prescribed by rules that her husband is insane;
- (b) a petition for divorce or judicial separation is presented by a husband and the court is satisfied on proof of such facts as may be prescribed by rules that his wife is insane; or
- (c) a petition for nullity is presented by a husband on the ground of his wife's insanity or mental deficiency or disorder,

and the court orders payments, other than a lump sum payment, in favour of the respondent under sections 27, 28(1), section 28(1) as applied by section 28(3) or by section 31, or under section 32(1), the court may order the payments to be made to such persons having charge of the respondent as the court may direct."

23. Section 46(3) of the principal Ordinance is amended by deleting paragraph (b) and substituting the following—

Amendment of
section 46.

"(b) in the case of a decree of divorce made in favour of a wife where the court holds that the only fact on which she is entitled to rely is that mentioned in section 11A(1)(e) and the court is satisfied on proof of such facts as may be prescribed by rules that her husband is insane, requiring the wife,"

24. Section 51 of the principal Ordinance is repealed.

Repeal of
section 51.

25. The Separation and Maintenance Orders Ordinance is amended by adding after section 6 the following new section—

Amendment of
Cap. 16.

"Condonation.
1965 c. 72,
s. 42(2).

6A. For the purposes of this Ordinance, adultery and cruelty shall not be deemed to have been condoned by reason only of a continuation or resump-

tion of cohabitation between the parties for one period not exceeding three months, or of any thing done during such cohabitation, if it is proved that cohabitation has continued or resumed, as the case may be, with a view to effecting a reconciliation.”.

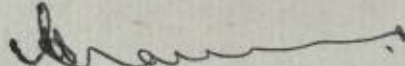
Saving.
1969 c. 55, s. 10.

26. (1) This Ordinance shall not have effect in relation to any petition for divorce or judicial separation presented before the 1st July 1972.

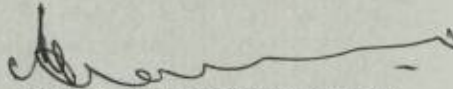
[cf. 1971 c. 44,
s. 7(3).]

(2) Notwithstanding the repeal and replacement of section 20 of the principal Ordinance by section 12 of this Ordinance, the repealed section 20 shall continue to have effect in relation to marriages which took place before the 1st July 1972 and the new section 20 shall have effect only in relation to marriages which took place after the 30th June 1972.

Passed by the Hong Kong Legislative Council this 24th day of May, 1972.


Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

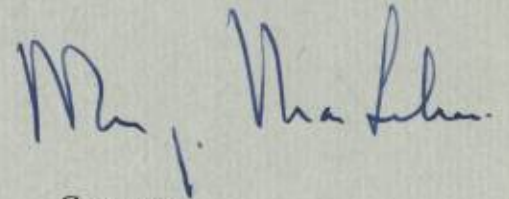

Clerk to the Legislative Council.

HONG KONG

No. 34 OF 1972



I assent.


Governor.

8th June, 1972.

An Ordinance to amend the Criminal Procedure Ordinance and to make other consequential amendments.

[]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Criminal Procedure (Amendment) (No. 2) Ordinance 1972 and shall come into operation on a day to be appointed by the Governor.

Short title
and com-
mencement.

2. Section 2 of the principal Ordinance is amended—

Amendment of
section 2.
(Cap. 221.)

(a) by inserting, before the definition of “bailiff”, the following—

““appellant” includes a person who has given notice of application for leave to appeal.”;

- (b) by inserting, before the definition of "indictment", the following—

"court of trial" in relation to an appeal means the court from which the appeal lies;

"hospital order" means an order made under section 45 or 54 of the Mental Health Ordinance;" ;

- (c) by inserting, before the definition of "property", the following—

"medical superintendent" means the medical superintendent or an assistant medical superintendent of a mental hospital appointed under section 4 of the Mental Health Ordinance;

"mental hospital" means any place declared to be a mental hospital under section 3 of the Mental Health Ordinance;" ;

- (d) by deleting the full stop at the end of the definition of "Registrar" and substituting a semicolon; and

- (e) by inserting, after the definition of "Registrar", the following—

"under disability", in relation to an accused person, means under any disability such that apart from this Ordinance it would amount to a bar to his being tried."

Amendment of section 13A.

3. Section 13A of the principal Ordinance is amended by inserting, after subsection (1), the following new subsection—

"(1A) Without prejudice to the generality of subsection (1) the court may make it a condition on which a person is admitted to bail that he shall surrender to the court, or to such person as the court may specify, any passport or travel document for such period as the court may specify."

Amendment of section 20.

4. Section 20 of the principal Ordinance is amended by deleting ", and, in cases of embezzling or obtaining money or bank notes by false pretences, by proof that the accused person embezzled or obtained any piece of coin or any bank note or any portion of the value thereof, although such piece of coin or bank

note may have been delivered to him in order that some part of the value thereof should be returned to the person delivering the same, or to some other person, and such part has been returned accordingly".

5. Section 24A of the principal Ordinance is amended in subsection (2) by inserting, after "disclosed in any depositions", the following—

Amendment of section 24A.

"or in any written statements admitted in evidence under section 81A of the Magistrates Ordinance".

6. Section 31 of the principal Ordinance is repealed and replaced by the following—

Repeal and replacement of section 31.

"Plea of *autrefois convict* or *autrefois acquit*.
(cf. 1851, c. 100, s. 28.)

31. (1) In criminal proceedings in any court on a plea of *autrefois convict* or *autrefois acquit* the accused person may state that he has been previously convicted or acquitted, as the case may be, of the offence charged.

(2) In this section, "court" includes the District Court and a magistrate."

7. Section 32 of the principal Ordinance is amended by—

Amendment of section 32.

(a) being renumbered as subsection (1) thereof; and

(b) inserting the following new subsection—

"(2) In this section, "court" includes the District Court and a magistrate."

8. Section 51 of the principal Ordinance is amended by inserting, after subsection (6), the following new subsection—

Amendment of section 51.

"(7) In subsection (2), "court of trial" includes the District Court and a magistrate."

9. Section 54 of the principal Ordinance is amended by—

Amendment of section 54.

(a) being renumbered as subsection (1) thereof; and

(b) inserting the following new subsection—

"(2) Notwithstanding any rule of law, the right of a person charged to make a statement without being sworn is hereby abolished."

Amendment of section 56.

10. Section 56 of the principal Ordinance is amended by—

(a) deleting "In cases where the right of reply depends upon the question whether evidence has been called for the defence, the" and substituting the following—

"The";

(b) renumbering it as subsection (1) thereof; and

(c) inserting the following new subsection—

Inf. 1964,
c. 34, s. 1(1).]

(2) Upon the trial of any person charged with an offence—

(a) the prosecution shall not be entitled to the right of reply on the ground only that the Attorney General or the Solicitor General appears for the Crown at the trial; and

(b) the time at which the prosecution is entitled to exercise the right shall, notwithstanding any rule of law, be after the close of the evidence for the defence and before the closing speech (if any) by or on behalf of the person charged."

Amendment of section 65B.

11. Section 65B of the principal Ordinance is amended by inserting, after subsection (7), the following new subsection—

"(8) In this section, "court" includes the District Court and a magistrate."

Amendment of section 65C.

12. Section 65C of the principal Ordinance is amended by inserting, after subsection (4), the following new subsection—

"(5) In this section, "court" includes the District Court and a magistrate."

Repeal and replacement of sections 74, 75 and 76.

13. Section 74, 75 and 76 of the principal Ordinance are repealed and replaced by the following—

"Acquittal on grounds of insanity. 1964, c. 84, s. 1; 1883, c. 58, s. 2.

74. Where in an indictment any act or omission is charged against any person as an offence, and it is given in evidence on trial of such person for that offence that he was insane, so as not to be responsible according to law for his actions at the time when the act was done or the omission made, then, if it appears

to the jury before whom such person is tried that he did the act or made the omission charged, but was insane as aforesaid at the time when he did or made the same, the jury shall return a special verdict that the accused person is not guilty by reason of insanity.

Unfitness to plead. 1964, c. 84, s. 4.

75. (1) Where on the trial of a person the question arises (at the instance of the defence or otherwise) whether the accused person is under disability, the following provisions shall have effect.

(2) The court, if having regard to the nature of the supposed disability is of opinion that it is expedient so to do and in the interests of the accused person, may postpone consideration of the said question (hereinafter referred to as "the question of fitness to be tried") until any time up to the opening of the case for the defence, and if before the question of fitness to be tried falls to be determined the jury return a verdict of acquittal on the count or each of the counts on which the accused person is being tried that question shall not be determined.

(3) Subject to subsection (2), the question of fitness to be tried shall be determined as soon as it arises.

(4) The question of fitness to be tried shall be determined by a jury; and—

(a) where it falls to be determined on the arraignment of the accused person, then if the trial proceeds the accused person shall be tried by a jury other than that which determined that question;

(b) where it falls to be determined at any later time it shall be determined by a separate jury or by the jury by whom the accused person is being tried, as the court may direct.

(5) Where in accordance with subsection (2) or (3) it is determined that the accused person is under disability, the trial shall not proceed or further proceed.

(6) In this section "verdict of acquittal" does not include a special verdict that the accused person is not guilty by reason of insanity.

1964, c. 84, s. 8(2).

Orders for admission to hospital. 1964, c. 84, s. 5.

76. (1) Where—

- (a) a special verdict that the accused person is not guilty by reason of insanity is returned, or
- (b) a finding is recorded that the accused person is under disability,

the court shall make an order that the accused person be admitted to such mental hospital as may be specified by the Governor.

Fourth Schedule.

(2) The provisions in that behalf of the Fourth Schedule shall have effect in relation to orders for admission to a mental hospital made under this section.

(3) Subject to the provisions of the Fourth Schedule, if while a person is detained in pursuance of an order under paragraph (b) of subsection (1) the Governor, after consultation with the medical superintendent, is satisfied that the said person can properly be tried, the Governor may by order direct that such person be remitted to prison or to a training centre established under section 3 of the Training Centre Ordinance for trial at the court where but for the order he would have been tried; and on his arrival at the prison or training centre the order under paragraph (b) of subsection (1) shall cease to have effect.

(Cap. 280.)

Evidence by prosecution of insanity or diminished responsibility. 1964, c. 84, s. 6.

76A. Where on a trial for murder the accused person contends—

- (a) that at the time of the alleged offence he was insane so as not to be responsible according to law for his actions; or
- (b) that at that time he was suffering from such abnormality of mind as is specified in subsection (1) of section 3 of the Homicide Ordinance (diminished responsibility),

(Cap. 339.)

the court shall allow the prosecution to adduce or elicit evidence tending to prove the other of those contentions, and may give directions as to the stage of the proceedings at which the prosecution may adduce such evidence.”

14. Section 78 of the principal Ordinance is amended by deleting, in subsection (3), “or a verdict of guilty but insane” and substituting the following—

Amendment of section 78.

“or a verdict of not guilty by reason of insanity”.

15. Part IV of the principal Ordinance is amended—

Amendment of Part IV.

- (a) by deleting the heading; and
- (b) by repealing sections 80 and 81 and their sub-headings and replacing them with the following—

“PART IV

APPEALS, QUESTIONS OF LAW RESERVED AND REVIEW

Interpretation

Meaning of sentence. 1968, c. 19, s. 50.

80. (1) In this Part—

“sentence”, (save in sections 81A, 81B and 81C) in relation to an offence, includes any order made by a court in dealing with an offender, including a hospital order.

(55 of 1971.)

(2) Any power of the Full Court to pass a sentence includes a power to make a recommendation for deportation under section 21 of the Immigration Ordinance 1971.

Reservation of question of law

Power to reserve question of law for consideration of Full Court.

81. (1) The judge of the court of trial may reserve for the consideration of the Full Court any question of law which may arise on the trial of any indictment.

(2) In exercising his power under subsection (1), the judge may act either of his own motion or on the application of the Attorney General or the defence.

(3) A judge may, if he reserves a question of law under subsection (1) and the accused person has been convicted—

- (a) postpone judgment until the question has been considered and decided; and
- (b) commit the person convicted to prison or admit him to bail, with or without one or more sufficient sureties, and in such sum as he may think fit, conditioned to appear at such time or times as the judge may direct and receive judgment.

(4) Upon consideration of a question reserved under subsection (1), the Full Court may—

- (a) affirm or quash the conviction or order a new trial; and
- (b) make such other orders as may be necessary to give effect to its decision:

Provided that the Full Court may, notwithstanding that it is of opinion that the question so reserved might be decided in favour of the convicted person, affirm the conviction if it considers that no miscarriage of justice has actually occurred.”

Amendment of section 81B.

16. Section 81B of the principal Ordinance is amended in subsection (3) by deleting “81(9)” and substituting the following—
“83V”.

Amendment of section 81C.

17. Section 81C of the principal Ordinance is amended, in paragraph (a) of subsection (1), by deleting “section 81” and substituting the following—
“this Part”.

Repeal and replacement of sections 82 and 83.

18. Sections 82 and 83 of the principal Ordinance and their new sub-headings are repealed and replaced by the following—

“Appeal against conviction on indictment

Right of appeal.
1968, c. 19,
s. 1.

82. (1) A person convicted of an offence on indictment may appeal to the Full Court against his conviction.

- (2) The appeal may be—
 - (a) on any ground which involves a question of law alone; and
 - (b) with the leave of the Full Court, on any ground which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Full Court to be a sufficient ground of appeal;

but if the judge of the court of trial grants a certificate that the case is fit for appeal on a ground which involves a question of fact, or a question of mixed law and fact, an appeal lies under this section without the leave of the Full Court.

Grounds for allowing appeal under s. 82, 1968, c. 19, s. 2.

83. (1) Except as provided by this Ordinance, the Full Court shall allow an appeal against conviction if it thinks—

- (a) that the verdict of the jury should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory; or
- (b) that the judgment of the court of trial should be set aside on the ground of a wrong decision on any question of law; or
- (c) that there was a material irregularity in the course of the trial,

and in any other case shall dismiss the appeal:

Provided that the Full Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no miscarriage of justice has actually occurred.

(2) In the case of an appeal against conviction the Full Court shall, if it allows the appeal, quash the conviction.

(3) An order of the Full Court quashing a conviction shall, except when under section 83E the appellant is ordered to be retried, operate as a direction to the court of trial to enter, instead of the record of conviction, a judgment and verdict of acquittal.

Power to substitute conviction of alternative offence.
1968, c. 19,
s. 3.

83A. (1) This section applies on an appeal against conviction, where the appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Full Court that the jury must have been satisfied of facts which proved him guilty of the other offence.

(2) The Full Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of the other offence, and pass such sentence in substitution for the sentence passed at the trial as may be authorized by law for the other offence, not being a sentence of greater severity.

Sentence where appeal allowed on part of an indictment. 1968, c. 19, s. 4(1), (2).

83B. (1) This section applies where on an appeal against conviction on an indictment containing two or more counts, the Full Court allows the appeal in respect of part of the indictment.

(2) The Full Court may in respect of any count on which the appellant remains convicted pass such sentence, in substitution for any sentence passed thereon at the trial, as it thinks proper and is authorized by law for the offence of which he remains convicted on that count.

Disposal of appeal against conviction on special verdict. 1968, c. 19, s. 5.

83C. (1) This section applies on an appeal against conviction by a person in whose case the jury has found a special verdict.

(2) If the Full Court considers that a wrong conclusion has been arrived at by the court of trial on the effect of the jury's verdict it may, instead of allowing the appeal, order such conclusion to be recorded as appears to it to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be authorized by law.

Substitution of finding of insanity or unfitness to plead. 1968, c. 19, s. 6.

83D. (1) Where, on an appeal against conviction, the Full Court is of opinion—

- (a) that the proper verdict would have been one of not guilty by reason of insanity; or
- (b) that the case is not one where there should have been a verdict of acquittal, but that there should have been a finding that the accused person was under disability,

the Full Court shall make an order that the appellant be admitted to such mental hospital as may be specified by the Governor.

Fifth Schedule.

(2) The Fifth Schedule shall apply with respect to the consequences and effect of an order made by the Full Court under this section.

(3) On making an order under this section in the case of any person, the Full Court may give such directions as it thinks fit for his conveyance to a place of safety and his detention there pending his admission to the mental hospital within the relevant period specified by the Fifth Schedule.

Fifth Schedule. (Cap. 136.)

(4) In section 52 of the Mental Health Ordinance (which relates to the removal to a mental hospital of

persons serving sentences of imprisonment and is applied by subsection (5) of the section to other forms of detention) references to a person serving a sentence of imprisonment shall be construed as not including references to a person subject to an order of the Full Court under this section.

Retrial

Power to order retrial. 1968, c. 19, s. 7.

83E. (1) Where the Full Court allows an appeal against conviction and it appears to the Full Court that the interests of justice so require, it may order the appellant to be retried.

(2) A person shall not under this section be ordered to be retried for any offence other than—

- (a) the offence of which he was convicted at the original trial and in respect of which his appeal is allowed as mentioned in subsection (1);
- (b) an offence of which he could have been convicted at the original trial on an indictment for the first-mentioned offence; or
- (c) an offence charged in an alternative count of the indictment in respect of which the jury were discharged from giving a verdict in consequence of convicting him of the first-mentioned offence.

Supplementary provisions as to retrial. 1968, c. 19, s. 8.

83F. (1) A person who is to be retried for an offence in pursuance of an order under section 83E shall be tried on a fresh indictment preferred by direction of the Full Court, and shall be tried before such court as the Full Court may direct (being the Supreme Court or, if the offence is within the jurisdiction of the District Court, the District Court) or, if no such direction is given, before the court by which he was originally tried.

(2) The Full Court may, on ordering a retrial, make such orders as appear to it to be necessary or expedient—

- (a) for the custody or admission to bail of the person ordered to be retried pending his retrial; or
- (b) for the retention pending retrial of any property or money forfeited, restored or paid by

virtue of the original conviction or any order made on that conviction.

(3) If the person ordered to be retried was, immediately before the determination of his appeal, liable to be detained in pursuance of an order under Part IV of the Mental Health Ordinance—

(Cap. 136.)

(a) that order shall continue in force pending the retrial as if the appeal had not been allowed; and

(b) any order made by the Full Court under this section for his custody or admission to bail shall have effect subject to the said order.

Sixth
Schedule.

(4) The Sixth Schedule shall have effect with respect to the procedure in the case of a person ordered to be retried and the sentence which may be passed if the retrial results in his conviction.

Appeal against sentence

Appeal
against
sentence
following
conviction
on indictment,
1968, c. 19,
s. 9.

83G. A person who has been convicted of an offence on indictment may appeal to the Full Court against any sentence (not being a sentence fixed by law) passed on him for the offence, whether passed on his conviction or in subsequent proceedings.

Appeal
against
sentence in
other cases
dealt with
at the
Supreme
Court,
1968, c. 19,
s. 10.

83H. (1) This section has effect for providing rights of appeal against sentence when a person is dealt with by the Supreme Court (otherwise than on appeal from a magistrate) for an offence of which he was not convicted on indictment.

(2) The proceedings from which an appeal against sentence lies under this section are those where an offender—

(a) is committed by a magistrate under subsection (3) of section 81B of the Magistrates Ordinance; or

(b) having been made the subject of a probation order or an order for conditional discharge or given a suspended sentence, appears or is brought before the court to be further dealt with for his offence.

(3) An offender dealt with for an offence in the Supreme Court in a proceeding to which subsection (2)

(Cap. 227.)

applies may appeal to the Full Court in any of the following cases—

(a) where either for that offence alone or for that offence and other offences for which sentence is passed in the same proceeding, he is sentenced to imprisonment for a term of six months or more; or

(b) where the sentence is one which the court convicting him had not power to pass; or

(c) where the court in dealing with him for the offence makes in respect of him—

(i) a recommendation for deportation; or

(ii) an order disqualifying him from holding or obtaining a driving licence to drive a motor vehicle under Part IV of the Road Traffic Ordinance; or

(iii) an order under section 109C.

(Cap. 220.)

(4) For the purposes of paragraph (a) of subsection (3), any two or more sentences are to be treated as passed in the same proceeding if—

(a) they are passed on the same day; or

(b) they are passed on different days but the court in passing any one of them states that it is treating that one together with the other or others as substantially one sentence;

and consecutive terms of imprisonment and terms which are wholly or partly concurrent are to be treated as a single term.

Supple-
mentary
provisions
as to
appeal
against
sentence.
1968, c. 19,
s. 11.

83I. (1) An appeal against sentence, whether under section 83G or 83H, lies only with the leave of the Full Court.

(2) Where the court, in dealing with an offender on his conviction on indictment, or in a proceeding to which subsection (2) of section 83H applies, has passed on him two or more sentences in the same proceeding (which expression has the same meaning in this subsection as it has for the purposes of section 83H), being sentences against which an appeal lies under section 83G or 83H, an appeal or application for leave to appeal against any one of those sentences shall be treated as an appeal or application in respect of both or all of them.

(3) On an appeal against sentence the Full Court, if it considers that the appellant should be sentenced differently for an offence for which he was dealt with by the court below may—

- (a) quash any sentence or order which is the subject of the appeal; and
- (b) in place of it pass such sentence or make such order as it thinks appropriate for the case (whether more or less severe) and as the court below had power to pass or make when dealing with him for the offence.

(4) The power of the Full Court under subsection (3) to pass a sentence which the court below had power to pass for an offence shall, notwithstanding that the court below made no order under subsection (1) of section 109C in respect of a suspended sentence previously passed on the appellant for another offence, include power to deal with him in respect of that suspended sentence where the court below—

- (a) could have so dealt with him if it had not passed on him a sentence of detention in a training centre quashed by the Full Court under paragraph (a) of subsection (3); or
- (b) did so deal with him in accordance with paragraph (d) of subsection (1) of section 109C by making no order in respect of the suspended sentence.

Appeal in cases of insanity

83J. A person in whose case there is returned a verdict of not guilty by reason of insanity may appeal to the Full Court against the verdict—

- (a) on any ground of appeal which involves a question of law alone; and
- (b) with the leave of the Full Court, on any ground which involves a question of fact alone, or question of mixed law and fact, or on any other ground which appears to the Full Court to be a sufficient ground of appeal,

but if the judge of the court of trial grants a certificate that the case is fit for appeal on a ground which involves a question of fact, or a question of mixed law and fact, an appeal lies under this section without the leave of the Full Court.

Appeal
against
verdict of
not guilty
by reason
of insanity.
1968, c. 19,
s. 12.

Disposal
of appeal
under
s. 83J.
1968, c. 19,
s. 13.

83K. (1) Subject to the provisions of this section, the Full Court shall allow an appeal under section 83J if it is of opinion—

- (a) that the verdict should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory; or
- (b) that the order of the court giving effect to the verdict should be set aside on the ground of a wrong decision of any question of law; or
- (c) that there was a material irregularity in the course of the trial,

and in any other case shall dismiss the appeal.

(2) The Full Court may dismiss an appeal under section 83J if of opinion that, notwithstanding that the point raised in the appeal might be decided in favour of the appellant, no miscarriage of justice has actually occurred.

(3) Where apart from this subsection—

- (a) an appeal under section 83J would fall to be allowed; and
- (b) none of the grounds for allowing it relates to the question of the insanity of the accused person,

the Full Court may dismiss the appeal if it is of opinion that, but for the insanity of the accused person, the proper verdict would have been that he was guilty of an offence other than the offence charged.

(4) Where an appeal under section 83J is allowed, the following provisions apply—

- (a) if the ground, or one of the grounds, for allowing the appeal is that the finding of the jury as to the insanity of the accused person ought not to stand and the Full Court is of opinion that the proper verdict would have been that he was guilty of an offence (whether the offence charged or any other offence of which the jury could have found him guilty), the Full Court—

- (i) shall substitute for the verdict of not guilty by reason of insanity a verdict of guilty of that offence; and

(ii) shall have the like powers of punishing or otherwise dealing with the appellant, and other powers, as the court of trial would have had if the jury had come to the substituted verdict; and

- (b) in any other case, the Full Court shall substitute for the verdict of the jury a verdict of acquittal.

(5) An order of the Full Court allowing an appeal in accordance with this section shall operate as a direction to the court of trial to amend the record to conform with the order.

Hospital
order on
disposal
of appeal.
1968, c. 19,
s. 14.

83L. (1) Where, on an appeal under section 83J, the Full Court is of opinion that the case is not one where there should have been a verdict of acquittal but that there should have been a finding that the accused person was under disability, the Full Court shall make an order that the appellant be admitted to such mental hospital as may be specified by the Governor.

(2) Where in accordance with paragraph (b) of subsection (4) of section 83K the Full Court substitutes a verdict of acquittal, and it is of opinion—

- (a) that the appellant is suffering from mental disorder of a nature or degree which warrants his detention in a mental hospital under observation (with or without medical treatment) for at least a limited period; and
- (b) that he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons,

the Full Court shall make an order that the appellant be admitted for observation to such mental hospital as may be specified by the Governor.

Fifth Schedule.

(3) The Fifth Schedule shall apply with respect to the consequences and effect of an order made by the Full Court under this section.

(4) On making an order under this section in the case of any person, the Full Court may give such directions as it thinks fit for his conveyance to a place of

safety and his detention there pending his admission to a mental hospital within the relevant period specified in the Fifth Schedule.

Fifth Schedule.

(Cap. 136.)

(5) In section 52 of the Mental Health Ordinance (which relates to the removal to a mental hospital of persons serving sentences of imprisonment and is applied by subsection (5) of that section also to persons in other forms of detention) references to a person serving a sentence of imprisonment shall be construed as not including references to a person subject to an order of the Full Court under subsection (1).

Unfitness to stand trial

Right of
appeal
against
finding of
disability.
1968, c. 19,
s. 15.

83M. (1) Where there has been a determination under section 75 of the question of a person's fitness to be tried, and the jury has returned a finding that he is under disability, the person may appeal to the Full Court against the finding.

- (2) An appeal under this section may be—
- (a) on any ground of appeal which involves a question of law alone; and
- (b) with the leave of the Full Court, on any ground which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Full Court to be a sufficient ground of appeal;

but if the judge of the court of trial grants a certificate that the case is fit for appeal on a ground which involves a question of fact, or a question of mixed law and fact, an appeal lies under this section without the leave of the Full Court.

Disposal
of appeal
under
s. 83M.
1968, c. 19,
s. 16.

83N. (1) The Full Court shall allow an appeal under section 83M if it is of opinion—

- (a) that the finding of the court of trial should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory; or
- (b) that the order of the court giving effect to the finding should be set aside on the ground of a wrong decision of any question of law; or

- (c) that there was a material irregularity in the course of the determination of the question of fitness to be tried;

and in any other case (except one to which subsection (2) of this section applies) shall dismiss the appeal; but it may dismiss the appeal if of opinion that, notwithstanding that the point raised in the appeal might be decided in favour of the appellant, no miscarriage of justice has actually occurred.

(2) An appeal under section 83M may, in a case where the question of fitness to be tried was determined later than on arraignment, be allowed by the Full Court (notwithstanding that the finding was properly come to) if the Full Court is of opinion that the case is one in which the accused person should have been acquitted before the question of fitness to be tried was considered; and, if an appeal is allowed under this subsection, the Full Court shall, in addition to quashing the finding, direct a verdict of acquittal to be recorded (but not a verdict of not guilty by reason of insanity).

(3) Subject to subsection (2) of this section, where an appeal under section 83M is allowed, the appellant may be tried accordingly for the offence with which he was charged, and the Full Court may make such orders as appears to it to be necessary or expedient pending any such trial for his custody, admission to bail or continued detention under the Mental Health Ordinance; and the Seventh Schedule shall have effect for applying provisions in Part IV of that Ordinance to persons in whose case an order is made by the Full Court under this subsection.

*Further provisions relating to appeals
and questions of law reserved*

83O. Except where, in the opinion of the Full Court, a miscarriage of justice has actually occurred, no judgment shall be stayed or reversed under section 81 and no appeal shall be allowed under section 83, 83K or 83N—

- (a) on the ground of any defect which, if pointed out before the jury were empanelled or during the progress of the trial, might have been amended by the court of trial; or

(Cap. 136.)
Seventh
Schedule.

Prohibition
of staying
or reversal
of judgment
or allowing
appeal on
specified
grounds.

- (b) because of any error committed in summoning or swearing a juror; or
- (c) because of any objection which might have been stated as a ground of challenge of a juror; or
- (d) because of any informality in the swearing of a witness.

*Review by Full Court of cases tried
on indictment*

Reference
by
Governor.
1968, c. 19,
s. 17.

83P. (1) Where a person has been convicted on indictment or been tried on indictment and found not guilty by reason of insanity, or been found by a jury to be under disability, the Governor may, if he thinks fit, at any time either—

- (a) refer the whole case to the Full Court and the case shall then be treated for all purposes as an appeal to the Full Court by that person; or
- (b) if he desires the assistance of the Full Court on any point arising in the case, refer that point to the Full Court for its opinion thereon, and the Full Court shall consider the point so referred and furnish the Governor with its opinion thereon accordingly.

(2) A reference by the Governor under this section may be made by him either on an application by the person referred to in subsection (1), or without any such application.

Procedure from notice of appeal to hearing

Initiating
procedure.
1968, c. 19,
s. 18.

83Q. (1) A person who wishes to appeal under this Part to the Full Court, or to obtain the leave of that Court to appeal, shall give notice of appeal or, as the case may be, notice of application for leave to appeal, in such manner as may be provided by rules and orders made under section 9.

(2) Notice of appeal, or of application for leave to appeal, shall be given within twenty-eight days from the date of the conviction, verdict or finding appealed against, or, in the case of appeal against sentence, from the date on which sentence was passed, or, in the case of an order made or treated as made on conviction, from the date of the making of the order:

Provided that, where sentence was passed more than seven days after the date of conviction, verdict or finding, notice of appeal, or of application for leave to appeal, against the conviction, verdict or finding may be given within twenty-eight days from the date on which sentence was passed.

(3) The time for giving notice under this section may be extended, either before or after it expires, by the Full Court.

1968, c. 19,
Sch. 4, Para. 1.

(4) In the case of a conviction involving sentence of death the power of the Full Court under subsection (3) to extend the time for giving notice of appeal or notice of application for leave to appeal, shall not be exercisable.

1968, c. 19,
Sch. 4, Para.
2(a), (b).

(5) In the case of a conviction involving sentence of death or corporal punishment—

- (a) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal or of application for leave to appeal may be given under this Ordinance; and
- (b) if notice is so given, the appeal or application shall be heard and determined with as much expedition as is practicable, and the sentence shall not be executed until after the determination of the appeal, or, in cases where an application for leave to appeal is finally refused, of the application.

[cf. 1968,
c. 19, Sch. 5,
Part 1.]

- (6) (a) Where a protected prisoner of war or protected internee has been sentenced to death or to imprisonment for a term of two years or more, the time within which he must give notice of appeal or of an application for leave to appeal shall, notwithstanding the provisions of subsection (1), be the period from the date of his conviction or, in the case of an appeal against sentence, of his sentence to the expiration of ten days after the date on which he received a notice given—

- (i) in the case of a protected prisoner of war, by an officer of Her Majesty's forces;
- (ii) in the case of a protected internee, by or on behalf of the Commissioner of Prisons,

that the protecting power has been notified of his conviction and sentence.

- (b) For the purposes of this subsection, the expression "protected prisoner of war", "protected internee" and "the protecting power" have the meanings assigned to them by the Geneva Conventions Act, 1957, as applied to Hong Kong by the Geneva Conventions Act (Colonial Territories) Order in Council 1959.

(1957 c. 52.)
(Vol. 20,
App. III,
p. BF 1.)

Bail.
1968, c. 19,
s. 19.

83R. The Full Court may, if it thinks fit, on the application of an appellant, admit him to bail pending the determination of his appeal.

Disposal of
groundless
appeal.
1968, c. 19,
s. 20.

83S. If it appears to the Registrar that a notice of an appeal purporting to be a ground of appeal which involves a question of law alone does not show any substantial ground of appeal, he may refer the appeal to the Full Court for summary determination; and where the case is so referred the Full Court may, if it considers that the appeal is frivolous or vexatious, and can be determined without adjourning it for a full hearing, dismiss the appeal summarily, without calling on anyone to attend the hearing or to appear for the Crown thereon.

Preparation
of case for
hearing.
1968, c. 19,
s. 21.

83T. (1) The Registrar shall—

- (a) take all necessary steps for obtaining a hearing of any appeal or application of which notice is given to him and which is not referred and dismissed summarily under section 83S; and
- (b) obtain and lay before the Full Court in proper form all documents, exhibits and other things which appear necessary for the proper determination of the appeal or application.

(2) Rules and orders made under section 9 may enable an appellant to obtain from the Registrar any documents or things, including copies or reproductions of documents, required for his appeal.

The hearing

Right of
appellant to
be present.
1968, c. 19,
s. 22.

83U. (1) Except as provided by this section, an appellant shall be entitled to be present, if he wishes it, on the hearing of his appeal, although he may be in custody.

(2) A person in custody shall not be entitled to be present—

- (a) where his appeal is on some ground involving a question of law alone; or
- (b) on an application by him for leave to appeal; or
- (c) on any proceedings preliminary or incidental to an appeal; or
- (d) where he is in custody in consequence of a verdict of not guilty by reason of insanity or of a finding of disability; or
- (e) where a question of law in a case in which he is the accused person has been reserved for the consideration of the Full Court under section 81,

unless the Full Court gives him leave to be present.

(3) The power of the Full Court to pass sentence on a person may be exercised although he is for any reason not present.

Evidence.
1968, c. 19,
s. 23.

83V. (1) For the purposes of this Part, the Full Court may, if it thinks it necessary or expedient in the interests of justice—

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
- (b) order any witness who would have been a compellable witness in the proceedings from which the appeal lies to attend for examination and be examined before the Full Court whether or not he was called in those proceedings; and
- (c) subject to subsection (3), receive the evidence, if tendered, of any witness.

(2) Without prejudice to subsection (1), where evidence is tendered to the Full Court thereunder the Full Court shall, unless it is satisfied that the evidence, if received, would not afford any ground for allowing the appeal, exercise its powers of receiving it if—

- (a) it appears to it that the evidence is likely to be credible and would have been admissible in the proceedings from which the appeal lies

on an issue which is the subject of the appeal; and

- (b) it is satisfied that it was not adduced in those proceedings but there is a reasonable explanation for the failure to adduce it.

(3) Paragraph (c) of subsection (1) applies to any witness (including the appellant) who is competent but not compellable, and applies also to the appellant's husband or wife where the appellant makes an application for that purpose and the evidence of the husband or wife could not have been given in the proceedings from which the appeal lies except on such an application.

(4) For the purposes of this Part, the Full Court may, if it thinks it necessary or expedient in the interests of justice, order the examination of any witness whose attendance might be required under paragraph (b) of subsection (1) to be conducted, in manner provided by rules and orders made under section 9, before any judge or officer of the Full Court or other person appointed by the Full Court for the purpose, and allow the admission of any depositions so taken as evidence before the Full Court.

(5) In no case shall any sentence be increased by reason of or in consideration of any evidence which was not given at the trial.

Other matters depending on result of appeal

Effect of
appeal on
sentence.
1968, c. 19,
s. 29.

83W. (1) The time during which an appellant is in custody pending the determination of his appeal shall, subject to any direction which the Full Court may give to the contrary, be reckoned as part of the term of any sentence to which he is for the time being subject.

(2) Where the Full Court gives a contrary direction under subsection (1), it shall state its reasons for doing so; and it shall not give any such direction where—

- (a) leave to appeal has been granted; or
- (b) a certificate has been given by the judge of the court of trial under section 82; or
- (c) the case has been referred to it by the Governor under section 83P.

(3) Where an appellant is admitted to bail under section 83R, the time during which he is at large after

being so admitted shall be disregarded in computing the term of any sentence to which he is for the time being subject.

(4) The term of any sentence passed by the Full Court under section 83A, 83B, 83C, 83I or subsection (4) of section 83K shall, unless the Full Court otherwise directs, begin to run from the time when it would have begun to run if passed in the proceedings from which the appeal lies.

Restitution
of property
on con-
viction.
1968, c. 19,
s. 30.

83X. (1) The operation of an order for the restitution of property to a person made on a conviction on indictment shall (unless the court of trial direct to the contrary in any case in which, in its opinion, the title to the property is not in dispute) be suspended—

- (a) in any case until the expiration of twenty-eight days from the date of conviction; and
- (b) where notice of appeal or of application for leave to appeal is given within twenty-eight days from the date of conviction, until the determination of the appeal.

(2) In cases where the operation of such an order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal.

(3) Provision may be made by rules and orders made under section 9 for securing the safe custody of any property, pending the suspension of the operation of any such order.

(4) The Full Court may by order annul or vary any order made by the court of trial for the restitution of property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect and, if varied, shall take effect as so varied.

Supplementary

83Y. (1) The powers of the Full Court under this Part which are specified in subsection (2) may be exercised by a single judge in the same manner as they may be exercised by the Full Court and subject to the same provisions.

- (2) The said powers are the following—
 - (a) to give leave to appeal;

Powers of
Full Court
under Part
IV which
are exercis-
able by
single judge.
1968, c. 19,
s. 31.

- (b) to extend the time within which notice of appeal or of application for leave to appeal may be given;
- (c) to allow an appellant to be present at any proceedings;
- (d) to order a witness to attend for examination;
- (e) to admit an appellant to bail;
- (f) to make orders under subsection (2) of section 83F and discharge or vary such orders;
- (g) to give directions under subsection (1) of section 83W;
- (h) to give leave to apply for the review of a sentence under section 81A.

(3) If the single judge refuses an application on the part of an appellant or applicant to exercise in his favour any of the powers above specified, the appellant or applicant shall be entitled to have the application determined by the Full Court.”

19. The principal Ordinance is amended by inserting, before the sub-heading to section 84, the following—

Addition of
new Part IVA.

“PART IVA

OTHER PROCEEDINGS SUBSEQUENT TO TRIAL”

20. The principal Ordinance is amended by adding, after the Third Schedule, the following new Schedules—

Addition of
new Schedules.

“FOURTH SCHEDULE [s. 76.]

EFFECT OF ORDERS FOR ADMISSION TO HOSPITAL

1964, c. 84,
Sch. 1;
1968, c. 19,
Sch. 5,
Paras. 1, 2(1).

1. (1) An order for admission to a mental hospital under subsection (1) of section 76 shall be sufficient authority for any person acting under the authority of the Governor to take the person to whom the order relates and convey him at any time within the period of twenty-eight days (beginning with the date on which the order was made) to the mental hospital specified by the Governor.

(2) The court by which any such order as aforesaid is made may give such directions as it thinks fit for the conveyance of a person to whom the order relates to a place of safety and his detention therein pending his admission to the mental hospital within the said period of twenty-eight days.

(3) Where a person is admitted within the said period to the mental hospital specified by the Governor under subsection (1) of section 76, such order shall be sufficient authority for the medical superintendent to detain him therein in accordance with section 45 of the Mental Health Ordinance as applied by paragraph 2 of this Schedule.

(Cap. 136.)

(Cap. 136.) 2. A person who is admitted to a mental hospital in pursuance of an order under subsection (1) of section 76 shall be treated for the purposes of the Mental Health Ordinance as if he had been so admitted in pursuance of a hospital order made (on the date of the order under subsection (1) of section 76) under section 45 of that Ordinance.

FIFTH SCHEDULE [ss. 83D & 83L.]

CONSEQUENCES AND EFFECT OF ORDER FOR
ADMISSION TO HOSPITAL UNDER SECTION
83D OR 83L

1968, c. 19,
Sch. 1.

1. (1) An order for admission to a mental hospital under section 83D or section 83L shall be sufficient authority for the Commissioner of Prisons or any other person directed to do so by the court to take the person to whom the order relates and convey him at any time within the relevant period to the mental hospital specified by the Governor.

(2) The relevant period for the purposes of this paragraph is—

- (a) in relation to an order under section 83D or subsection (1) of section 83L, twenty-eight days;
- (b) in relation to an order under subsection (2) of section 83L, seven days,

the said period to begin in either case with the date on which the order was made.

(Cap. 136.)

(3) Where a person is admitted within the relevant period to the mental hospital specified by the Governor under section 83D or, as the case may be, section 83L, the order shall be sufficient authority for the medical superintendent to detain him in accordance with the provisions of the Mental Health Ordinance referred to in paragraphs 2 and 3, as those provisions apply by virtue of those paragraphs.

(Cap. 136.)

2. A person who is admitted to a mental hospital in pursuance of an order under section 83D or subsection (1) of section 83L shall be treated for the purposes of the Mental Health Ordinance as if he had been so admitted in pursuance of a hospital order made (on the date of the order made under section 83D or subsection (1) of section 83L) under section 45 of the Mental Health Ordinance without any period of detention being specified in the order.

(Cap. 136.)

3. A person who is admitted to a mental hospital in pursuance of an order under subsection (2) of section 83L shall be treated for the purposes of Part III of the Mental Health Ordinance as if he had been admitted (on the date of the order made under subsection (2) of section 83L) in pursuance of an application for detention and observation duly made under the said Part III.

SIXTH SCHEDULE [s. 83F.]

PROCEDURAL AND OTHER PROVISIONS APPLICABLE
ON ORDER FOR RETRIAL

Depositions

1968, c. 19,
Sch. 2,
(Cap. 8.)

1. On a retrial, section 39 of the Evidence Ordinance (admissibility in evidence in criminal proceedings of deposition of person dead, etc.) shall not apply to the depositions of any person who gave evidence at the original trial or to any written statement by such a person tendered under section 81A of the Magistrates Ordinance in the committal proceedings before the original trial; but a transcript of the record of the evidence given by any witness at the original trial may, with the leave of the judge be read as evidence—

(Cap. 227.)

- (a) by agreement between the prosecution and the defence; or
- (b) if the judge is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find him or secure his attendance have been made without success,

and in either case may be so read without further proof, if verified in accordance with rules and orders made under section 9.

Sentence on conviction at retrial

2. (1) Where a person ordered to be retried is again convicted on retrial, the court before which he is convicted may pass in respect of the offence any sentence authorized by law.

(2) Without prejudice to its power to impose any other sentence, the court before which an offender is convicted on retrial may pass in respect of the offence any sentence passed in respect of that offence on the original conviction notwithstanding that, on the date of the conviction on retrial, the offender has ceased to be of an age at which such a sentence could otherwise be passed.

(3) Where the person convicted on retrial is sentenced to imprisonment or other detention, the sentence shall begin to run from the time when a like sentence passed at the original trial would have begun to run; but in computing the term of his sentence or the period for which he may be detained thereunder, as the case may be, there shall be disregarded—

- (a) any time before his conviction on retrial which would have been disregarded in computing that term or period if the sentence had been passed at the original trial and the original conviction had not been quashed; and
- (b) any time during which he was at large after being admitted to bail under subsection (2) of section 83F.

(4) Section 67A shall apply to any sentence imposed on conviction on retrial as if it had been imposed on the original conviction.

(5) In this paragraph "sentence" has the meaning assigned by section 80.

SEVENTH SCHEDULE [s. 83N.]

APPLICATION OF PART IV OF MENTAL HEALTH
ORDINANCE WHERE ORDER MADE UNDER
SECTION 83N

Order for custody pending trial

1968, c. 19,
Schedule 3.

(Cap. 136.)

1. Where an order is made by the Full Court under subsection (3) of section 83N of this Ordinance for a person to be kept in custody pending trial, sections 53 and 54 of the Mental Health Ordinance, shall apply to him as they apply to the persons listed in paragraphs (a) to (d) of subsection (2) of section 53 of the Mental Health Ordinance.

*Order for continued detention under
Mental Health Ordinance*

(Cap. 136.)

2. Where an order is made by the Full Court under subsection (3) of section 83N of this Ordinance for a person's continued detention under the Mental Health Ordinance, Part IV of that Ordinance (admission of patients concerned in criminal proceedings and transfer of patients under sentence) shall apply to him as if he had been ordered under the said subsection (3) to be kept in custody pending trial and were detained in pursuance of a transfer order."

Savings and
transitional
provisions.

21. (1) Section 54(2) of the principal Ordinance (as inserted by this Ordinance) shall not apply with regard to the trial of any offence, with which the accused person was charged before the commencement of this Ordinance.

[cf. 1964, c. 84,
s. 8(3)(a),
s. 8(5)(a), (c).]

(Cap. 136.)

(2) Sections 74, 75, 76(1) and 76A of the principal Ordinance (as replaced by this Ordinance) shall not apply where the accused person was arraigned before the commencement of this Ordinance, and the repealed sections 74, 75 and 76 of that Ordinance, and section 57 of the Mental Health Ordinance (as repealed by this Ordinance) shall continue to apply to such case, as if this Ordinance had not been passed.

[cf. 1964, c. 84,
s. 8(5)(b).]

(3) Section 81(5)(d) of the principal Ordinance (repealed by this Ordinance) shall continue to apply to appeals the hearing of which began before the commencement of this Ordinance, as if this Ordinance had not been passed.

1964, c. 84,
s. 8(3)(b).

(4) Sections 83D, 83J and 83M of the principal Ordinance (as replaced by this Ordinance) shall apply whenever the accused person was arraigned, but—

- (a) section 83D shall not apply where the hearing of the appeal began before the commencement of this Ordinance;
- (b) section 83J shall not apply where a special verdict under section 75 of the principal Ordinance (repealed by this

Ordinance) was returned before the commencement of this Ordinance;

(c) section 83M shall not apply where a finding that the accused person is under disability was recorded before the commencement of this Ordinance.

(5) Sections 83E and 83F of the principal Ordinance (as replaced by this Ordinance) shall apply to convictions before as well as after the commencement of this Ordinance.

[cf. 1964, c. 43,
s. 6(6).]

(6) Section 83W of the principal Ordinance (as replaced by this Ordinance) shall not apply to any person whose appeal was determined by the Full Court before the commencement of this Ordinance, and section 83(2) of the principal Ordinance (repealed by this Ordinance) shall continue to apply to such persons as if this Ordinance had not been passed.

[cf. 1966, c. 31,
s. 6(3).]

(7) Any right of appeal subsisting immediately before the commencement of this Ordinance by virtue of an enactment repealed thereby shall after its commencement be treated as subsisting by virtue of the corresponding enactment in this Ordinance.

1968, c. 19,
Sch. 6.

(8) Any appeal or application pending before the commencement of this Ordinance under an enactment so repealed may be prosecuted and disposed of in accordance with the provisions of this Ordinance corresponding to those in force immediately before its commencement and applicable to the appeal or application.

(9) In so far as any order made, direction given or other thing done under an enactment repealed by this Ordinance could have been made, given or done under a corresponding provision of this Ordinance, it shall not be invalidated by the repeal of that enactment but shall have effect as if made, given or done under that corresponding provision.

(10) The mention of particular matters in this section shall not affect the general application of section 23 of the Interpretation and General Clauses Ordinance with regard to the effects of repeals.

(Cap. 1.)

22. The enactments specified in the first column of the Schedule are amended to the extent and in the manner set out in the second column of that Schedule.

Consequential
amendments.
Schedule.

SCHEDULE

[s. 23.]

CONSEQUENTIAL AMENDMENTS

District Court
Ordinance.

Section 37 is amended by deleting "83" and substituting
the following—

(Cap. 5.)

"83Y".

1. Section 54 is amended—

- (a) in subsection (1), by deleting "the court or magistrate to which he was committed or by which he was remanded, as the case may be," and substituting the following—

"the court or magistrate having jurisdiction to try or otherwise deal with him;"

- (b) in paragraph (a) of subsection (2), by deleting "the court or magistrate to which he was committed or by which he was remanded" and substituting the following—

"the court or magistrate having jurisdiction to try or otherwise deal with him;"

- (c) in paragraph (b) of subsection (2)—

- (i) by deleting "the Court or magistrate to which the person named in the transfer order was committed or by which he was remanded" and substituting the following—

"the court or magistrate having jurisdiction to try or otherwise deal with the person named in the transfer order";

- (ii) by deleting "a person committed for trial," and substituting the following—

"a person awaiting trial."

2. Section 57 is repealed and replaced by the following—

"Persons ordered to be admitted to a mental hospital under Criminal Procedure Ordinance. (Cap. 221.)

57. Notwithstanding anything contained in section 76 of the Criminal Procedure Ordinance, the Governor may order that a person found not guilty by reason of insanity be detained in custody in some other manner than is specified in that Ordinance."

3. Section 58 is amended by inserting, after "the Ordinance" the following—

"or under the Criminal Procedure Ordinance."

4. Section 59 is amended—

- (a) by deleting "or who was transferred and detained by an order made under section 57," and substituting the following—

"or who was admitted to a mental hospital by an order made under the Criminal Procedure Ordinance;"

- (b) by deleting "or until Her Majesty's pleasure be further declared as the case may be" and substituting the following—

"or while the order made under the Criminal Procedure Ordinance is in force, as the case may be".

Section 8 is amended—

- (a) in subsection (4) by deleting "or to make any statement"; and

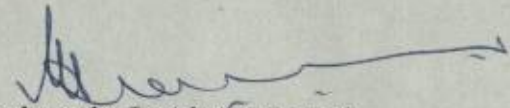
- (b) in subsection (5) by deleting "or for the purpose of explaining anything in the statement of the child or young person but not otherwise".

Section 118 is amended in paragraph (b) of subsection (1) by deleting "subsection (9) of section 81" and substituting the following—

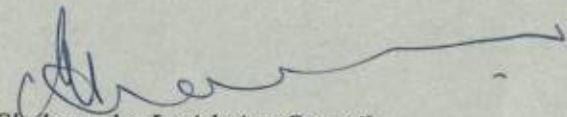
"section 83V".

Section 12A is amended in subsection (1) by deleting "until Her Majesty's pleasure is known".

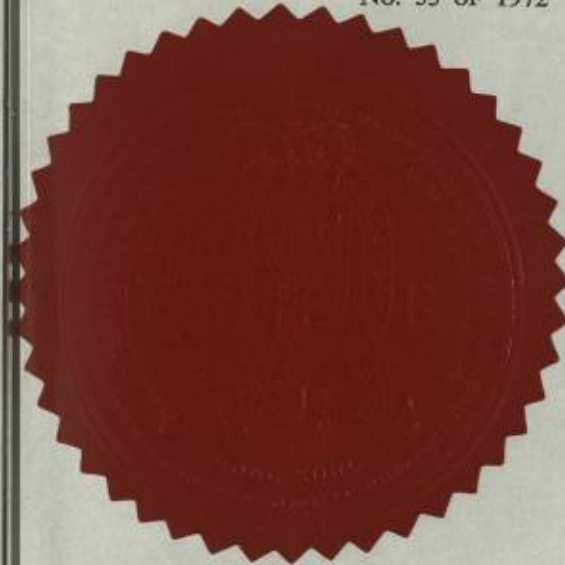
Passed by the Hong Kong Legislative Council this 7th day of June, 1972.


Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.


Clerk to the Legislative Council.

No. 35 OF 1972

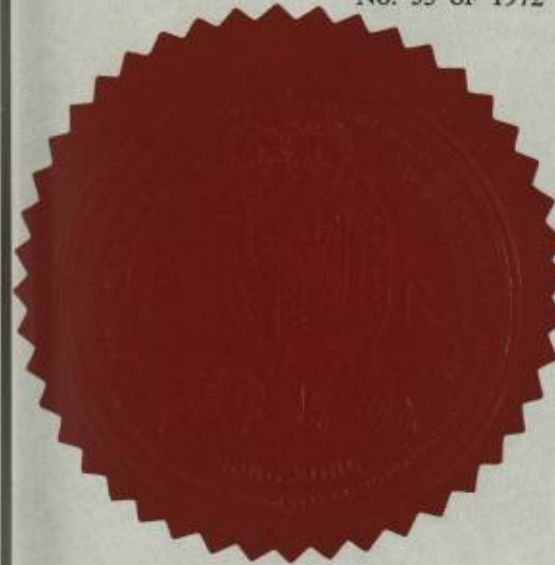


I assent.

Wm. J. Milliken
Governor.

HONG KONG

No. 35 OF 1972



I assent.

Governor.

22nd June, 1972.

An Ordinance to amend the Evidence Ordinance.

[23rd June, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Evidence (Amendment) Ordinance 1972. Short title.

2. Section 23D of the principal Ordinance is amended— Amendment of section 23D. (Cap. 8.)
(a) in subsection (1), by deleting "for chemical examination or analysis"; and
(b) in subsection (2), by deleting "chemical".

3. The principal Ordinance is amended by adding after section 23F the following new sections— Addition of sections 23G and 23H.

"Certificates of accuracy of speedometers and radar and weighing devices.

23G. (1) A document purporting—
(a) to be a record of the testing of the accuracy, inspection and servicing of—
(i) the speedometer of the motor vehicle specified in the document;

(ii) a radar device or apparatus specified in the document designed and used for the purpose of ascertaining the speed of a motor vehicle; or

(iii) a weighing device or apparatus specified in the document designed and used for the purpose of ascertaining the laden or unladen weight of a motor vehicle; and

(b) to be certified—

(i) in the case of the speedometer, by a person authorized in this behalf by the Director of Public Works;

(ii) in the case of a radar device or apparatus designed and used for the purpose of ascertaining the speed of a motor vehicle, by a person authorized in this behalf by the Commissioner of Police; and

(iii) in the case of a weighing device or apparatus designed and used for the purpose of ascertaining the laden or unladen weight of a motor vehicle, by a person authorized in this behalf by the Commissioner for Transport,

shall be admitted in any criminal or civil proceedings before any court on its production without further proof.

(2) On the production of a document under subsection (1)—

(a) the court before which it is produced shall, until the contrary is proved, presume—

(i) that it was signed at the time and place specified therein by a person authorized by the appropriate public officer specified in the document;

(ii) that the facts stated in the document relating to the testing of the accuracy, inspection and servicing of the speedometer of the vehicle specified therein or the radar or weighing device or apparatus specified therein are true; and

(iii) that the record of the facts stated in the document was made and compiled at the time stated therein; and

(b) the document shall be *prima facie* evidence of all matters contained therein.

Certificate
of posting
of docu-
ments.

23H. (1) Where any Ordinance authorizes or requires any document to be served or any notice to be given by post or by registered post, a certificate purporting—

(a) to certify—

(i) that a specified document or notice, addressed to a person named in the certificate, was addressed to that person at a specified address;

(ii) that the appropriate postage on the said document or notice was prepaid; and

(iii) that the said document or notice was despatched by post or by registered post at a time and place specified in the certificate; and

(b) to be signed at the time and place specified in the certificate by the person who—

(i) ensured that the appropriate postage on the said document or notice was prepaid; and

(ii) despatched the said document or notice by post or by registered post at the said specified time and place,

shall be admitted in any criminal or civil proceedings before any court on its production without further proof.

(2) On the production of a certificate under subsection (1)—

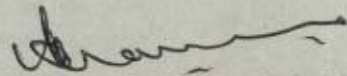
(a) the court before which it is produced shall, until the contrary is proved, presume—

(i) that the facts stated therein relating to the posting of the document or notice specified therein are true;

(ii) that the certificate was signed at the time and place specified therein by the person who posted the specified document or notice; and

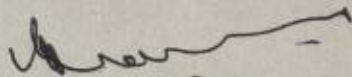
(b) the certificate shall be *prima facie* evidence of all of the matters contained therein.”

Passed by the Hong Kong Legislative Council this 21st day of June, 1972.



Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.



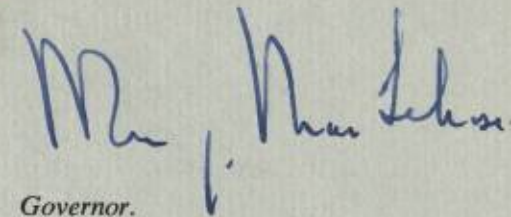
Clerk to the Legislative Council.

HONG KONG

No. 36 OF 1972



I assent.



Governor.

22nd June, 1972.

An Ordinance to amend the Interpretation and General Clauses Ordinance.

[23rd June, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Interpretation and General Clauses (Amendment) Ordinance 1972. Short title.

2. Section 8 of the principal Ordinance is amended by— Amendment of section 8. (Cap. 1.)

- (a) inserting the following after "dispatching"—
"it";
- (b) deleting the following—
"an envelope containing the document or notice";
and
- (c) deleting "the envelope" and substituting the following—
"the document or notice".

Amendment of
section 62.

3. Section 62 of the principal Ordinance is amended—
- (a) in subsection (1)(a) by deleting "the Colonial Secretary" and substituting the following—
"any public officer specified in the Sixth Schedule"; and
- (b) by inserting after subsection (2) the following new subsection—
"(3) The Governor may, by order published in the *Gazette*, amend the Sixth Schedule."

Addition of
Six Schedule.

4. The principal Ordinance is amended by adding after the Fifth Schedule the following new Schedule—

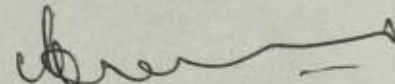
"SIXTH SCHEDULE [s. 62.]
PUBLIC OFFICERS

Colonial Secretary.
Financial Secretary.
Deputy Colonial Secretary.
Defence Secretary.
Establishment Secretary.
Deputy Financial Secretary.
Deputy Economic Secretary.
Deputy Defence Secretary.
Principal Assistant Colonial Secretary.
Principal Assistant Financial Secretary.
Assistant Colonial Secretary.
Assistant Financial Secretary.
Assistant Economic Secretary."

Passed by the Hong Kong Legislative Council this 21st day of June, 1972.


Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

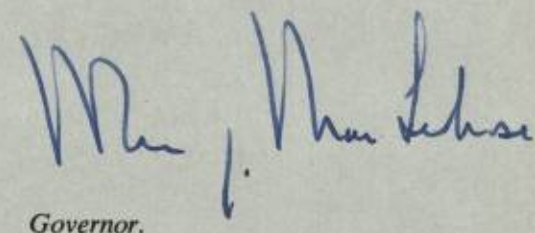

Clerk to the Legislative Council.

HONG KONG

No. 37 OF 1972



I assent.



Governor.

22nd June, 1972.

An Ordinance to amend the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance.

[23rd June, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. (1) This Ordinance may be cited as the Judicial Proceedings (Adjournment During Gale Warnings) (Amendment) Ordinance 1972.

Short title and commencement of section 2.

(2) Section 2 shall not come into operation until 1st January 1973.

2. Section 5 of the principal Ordinance is amended in subsection (1)(a) by deleting "No. 5, 6, 7, 8, 9 or 10" and substituting the following—

Amendment of section 5. (Cap. 62.)

"No. 8NW, 8SW, 8NE, 8SE, 9 or 10".

Amendment of
section 6.

3. Section 6 of the principal Ordinance is repealed and replaced by the following—

“Chief Justice may order adjournment or resumption of judicial proceedings.

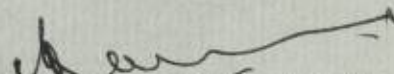
6. (1) Notwithstanding sections 3 and 4, the Chief Justice may by order provide for—

- (a) the adjournment of any judicial proceedings; and
- (b) the resumption of any judicial proceedings adjourned under paragraph (a) or by virtue of section 3,

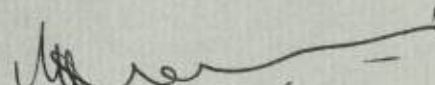
if, in his opinion, it is expedient to do so, by reason of a tropical cyclone or any circumstances arising therefrom, including its passing.

(2) Any order made under subsection (1) shall be published in the *Gazette* as soon as practicable after the making thereof and, in the case of an order for resumption, shall specify the day and the time when the adjourned proceedings shall be resumed.”.

Passed by the Hong Kong Legislative Council this 21st day of June, 1972.


Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

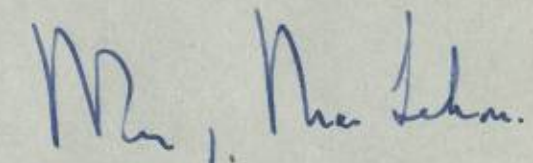

Clerk to the Legislative Council.

HONG KONG

No. 38 OF 1972



I assent.


Governor.

22nd June, 1972.

An Ordinance to amend the Pensions Ordinance.

[23rd June, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Pensions (Amendment) Ordinance 1972. Short title.

2. Section 5 of the principal Ordinance is amended by deleting subsection (2) and substituting the following— Amendment of section 5. (Cap. 89.)

“(2) Save as provided in subsection (3), if the Governor, after considering the advice of the Public Services Commission, is satisfied that an officer has been guilty of negligence, irregularity or misconduct he may reduce or altogether withhold the pension, gratuity or other allowance payable to that officer under this Ordinance.

(Cap. 93.) (3) The power conferred on the Governor by subsection (2) shall be exercised by the Governor in Council in relation to an officer holding a pensionable office referred to in subsection (2) of section 6 of the Public Services Commission Ordinance and for the purposes of this subsection the advice of the Public Services Commission shall not be required."

Amendment of section 8.

- 3. Section 8 of the principal Ordinance is amended— (a) in subsection (2) by deleting "It" and substituting the following— "Save as provided in subsection (3), it"; and (b) by inserting after subsection (2) the following new subsection—

(Cap. 93.) "(3) The power conferred on the Governor by paragraph (a) of subsection (2) shall be exercised by the Governor in Council in relation to an officer, other than a judge, holding a pensionable office referred to in subsection (2) of section 6 of the Public Services Commission Ordinance and for the purposes of this subsection the advice of the Public Services Commission shall not be required."

Passed by the Hong Kong Legislative Council this 21st day of June, 1972.

[Signature]
Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

[Signature]
Clerk to the Legislative Council.



I assent.

[Signature]

HONG KONG

No. 39 OF 1972

Amendment of
section 8.

Services Commission Ordinance and for the purposes of this subsection the advice of the Public Services Commission shall not be required.”

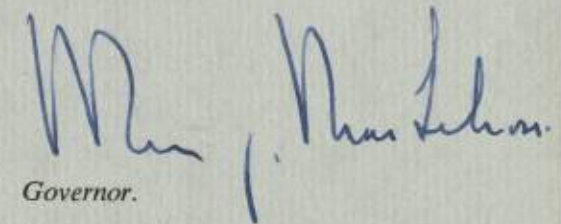
3. Section 8 of the principal Ordinance is amended—
- (a) in subsection (2) by deleting “It” and substituting the following—
- “Save as provided in subsection (3), it”; and
- (b) by inserting after subsection (2) the following new subsection—

(Cap. 93.)

“(3) The power conferred on the Governor by paragraph (a) of subsection (2) shall be exercised by the Governor in Council in relation to an officer, other than a judge, holding a pensionable office referred to in subsection (2) of section 6 of the Public Services Commission Ordinance and for the purposes of this subsection the advice of the Public Services Commission shall not be required.”



I assent.



Governor.

22nd June, 1972.

An Ordinance to consolidate and amend the law relating to ancillary and other relief in matrimonial causes and other matrimonial proceedings; to abolish the right to claim restitution of conjugal rights; and for purposes connected with or relating to the matters aforesaid.

[1st July, 1972.]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I

PRELIMINARY

1. This Ordinance may be cited as the Matrimonial Proceedings and Property Ordinance 1972 and shall come into operation on the 1st July 1972.

Short title and
commencement.

Interpretation.
1970 c. 45, s. 27.

2. (1) In this Ordinance unless the context otherwise requires—

“adopted” means adopted in pursuance of an adoption order made under any enactment in force in Hong Kong at any time relating to the adoption of children or any corresponding imperial enactment;

“child”, in relation to one or both parties to a marriage, includes an illegitimate or adopted child of that party or, as the case may be, of both parties;

“child of the family”, in relation to the parties to a marriage, means—

- (a) a child of both those parties; and
- (b) any other child who has been treated by both those parties as a child of their family;

“court” means the Supreme Court or, where the District Court has jurisdiction by virtue of the Matrimonial Causes Ordinance, the District Court;

(Cap. 179.)

“custody”, in relation to a child, includes access to the child;

“education” includes training.

(2) For the avoidance of doubt it is hereby declared that references in this Ordinance to remarriage include references to a marriage which is by law void or voidable.

PART II

ANCILLARY AND OTHER RELIEF IN MATRIMONIAL CAUSES AND OTHER MATRIMONIAL PROCEEDINGS

Maintenance
pending suit
in cases of
divorce, etc.
1970 c. 45, s. 1.

3. On a petition for divorce, nullity of marriage or judicial separation, the court may order either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and ending with the date of the determination of the suit, as the court thinks reasonable.

4. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may, subject to the provisions of section 25(1), make any one or more of the following orders, that is to say—

Financial provision for party to a marriage in cases of divorce, etc.
1970 c. 45, s. 2.

- (a) an order that either party to the marriage shall make to the other such periodical payments and for such term as may be specified in the order;
- (b) an order that either party to the marriage shall secure to the other to the satisfaction of the court, such periodical payments and for such term as may be so specified;
- (c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified.

(2) Without prejudice to the generality of subsection (1)(c), an order under this section that a party to a marriage shall pay a lump sum to the other party—

- (a) may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before making an application for an order under this section;
- (b) may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

5. (1) Subject to the provisions of section 10, in proceedings for divorce, nullity of marriage or judicial separation, the court may make any one or more of the orders mentioned in subsection (2)—

Financial provision for child of the family in cases of divorce, etc.
1970 c. 45, s. 3.

- (a) before or on granting the decree of divorce, of nullity of marriage or of judicial separation, as the case may be, or at any time thereafter;
- (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.

(2) The orders referred to in subsection (1) are—

- (a) an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments and for such term as may be so specified;
- (b) an order that a party to the marriage shall secure to such person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the court, such periodical payments and for such term as may be so specified;
- (c) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of such a child, or to such a child, such lump sum as may be so specified.

(3) Without prejudice to the generality of subsection (2)(c), an order under this section for the payment of a lump sum to any person for the benefit of a child of the family, or to such a child, may be made for the purpose of enabling any liabilities or expenses reasonably incurred by or for the benefit of that child before the making of an application for an order under this section to be met.

(4) An order under this section for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

(5) While the court has power to make an order in any proceedings by virtue of subsection (1)(a), it may exercise that power from time to time; and where the court makes an order by virtue of subsection (1)(b) in relation to a child it may from time to time make a further order under this section in relation to him.

6. On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation, or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may, subject to the provisions of sections 10 and 25(1), make any one or more of the following orders that is to say—

- (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such

Orders for transfer and settlement of property and for variation of settlements in cases of divorce, etc. 1970 c. 45, s. 4.

person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;

- (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;
- (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage;
- (d) an order extinguishing or reducing the interests of either of the parties to the marriage under any such settlement;

and the court may make an order under paragraph (c) notwithstanding that there are no children of the family.

7. (1) It shall be the duty of the court in deciding whether to exercise its powers under section 4 or 6 in relation to a party to the marriage and, if so, in what manner, to have regard to the conduct of the parties and all the circumstances of the case including the following matters, that is to say—

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;

Matters to which court is to have regard in deciding what orders to make under sections 4, 5 and 6. 1970 c. 45, s. 5.